No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Intervenors and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VIII

PAGES 5769-6262

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F. D. MONCKTON,
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TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
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A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

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Whereupon J. E. KENNERLY, called as a witness on behalf of complainant, being duly sworn, testified, that he is fifty-nine years old, lives in Lane County, Oregon, and has lived in Oregon since 1876, in Lane County most altogether, in the vicinity of Eugene, Springfield and Leaburg. He has been ranching, farming quite a bit, in the stock business a good deal, raised stock, and bought and sold stock, also logged some. He has been engaged in farming about twenty-three miles east of Eugene in section 10, township 17 south, range 1 east, and owned a hundred and sixty acres there—not all in farm. It was not a homestead; he bought it. There was about seventy acres of it on the McKenzie River bottom, and the balance was on the hillside, bench land, part of it. He had that all in grass and the bottom land he farmed, consisting of about thirty-five or forty acres. The balance he had seeded down, it had been timber land, but was logged off, cleared and seeded to grass, timothy and clover hay. He raised on his farming land almost anything he wanted to, wheat and oats, vegetables of all kinds, berries and fruit. He is acquainted with the farming conditions and the crops raised in that vicinity generally throughout that part of Lane County. They can successfully raise there almost anything they want to, in the way of grain, vegetables, wheat, oats, rye, barley, vegetables of most any kind, fruit and berries. He lives at Leaburg now, which is shown on "Defendants' Exhibit 259," and is acquainted with that area from the mouth of the McKenzie to the head of it. The McKenzie River empties into the Willamette near the

corners of townships 16 and 17 south, ranges 3 and 4 west, according to this map, and meanders through township 17 south, ranges 1, 2 and 3 west, and township 17 south, range 1 east, and flows into the southern part of township 16 south, range 2 east, and into the northeast corner of township 17 south, range 3 east. Those are the menderings of the river as shown on "Defendants' Exhibit 259." He is acquainted on each side of the river from four to six miles out, and has been in that country a long while and has traveled all over this country, rode all over it, hunted all through it, and is pretty well acquainted with it and with the conditions of the soil, the lay of the land, and the formations there. There is about one-third of these railroad lands that are good farming lands, tillable lands, and he believes that average would hold good if the lands were divided into one hundred and sixty acre tracts. There are settlers living on similar lands, engaged in and earning their living from, farming, in that community. There is about one-third of it that is good pasture land, for instance, the hillside is a little too steep to plow. It is good soil, and they burn it off and seed it to grass for pasture land. He lives now in section 10, and the railroad lands are near his land—section 9 joins him and a part of that is railroad land, section 3 joins his place and that is railroad land. The Booth-Kelly Lumber Company owns a part of section 3 which they bought from the railroad company. Other parties there own a part of section 9, part of it is in litigation between a settler and the railroad company. That lays right along the river, right west of his place, joins him on the west. Part of sec-

tion 9 lays right on the river and is sandy soil. The bench land, hill land, is a dark red clay soil. These lands mentioned are about the same as that he has farmed there. He is engaged in farming there now, but not very extensively.

Q. In your opinion, Mr. Kennerly, what has been the effect of the Railroad Company's failure to comply with the conditions of this grant to sell to actual settlers in tracts of 160 acres, at $2.50 an acre, and in selling to big companies in large tracts, and withdrawing the land from sale in this community that you reside in, or are acquainted with?

A. Well, it has been quite a drawback to our country there, shutting out settlers, and they have got some good land there in that section of the country.

Q. You mean land that would be good for farming purposes?

A. Yes, good for farming purposes, yes.

Whereupon, upon cross examination, witness testified, that, take it as a whole, he could hardly say what this railroad land is worth in his judgment, on an average, taking into account the timber that is on it and all its possibilities. There is a difference in the land itself, and then there is a difference in the timber, but take it as a whole, he supposes it ought to be worth right in his section there, twenty dollars an acre—the best of it. The best of it in hundred and sixty acre tracts, would probably be worth twenty-five dollars an acre. There are some bad tracts or parcels in there that are of no

particular value for any purpose, in certain localities there, on the high mountains, high peaks, that it is nothing but rock. Take it all over, about one-third or one-fourth of that railroad land in there would be practically of no value, that is, what he refers to as on high peaks and rocky. He doesn't see what those little points could be worth. Take the whole of the land that he knows, within five to six miles either side of the McKenzie River from where the railroad lands begin up to where they end, one-third of it would be agricultural land. He believes that he did not say that 25 per cent of the whole thing would be rocky and of no particular value, but then it is something near that. This piece of land that he owns there was a homestead and was entered about forty years ago. He logged off some of it—about sixty acres—and got something near 1,700,000 feet of average fir timber. He sold part of it to Max Friendly at Corvallis, and also to the Booth-Kelly Lumber Company. The man from whom he bought had logged off a little of it, a small amount, right on the bottom along the river. This land of his, that had been cleared was right along the river, in the bottom mostly, that was covered with heavy timber and brush until this man logged some of it off. They usually slashed the brush there in the spring, and then in the summer when it gets dry they run fire through it, burn the brush all out, and then take powder, after it is logged off, and blow the stumps out, haul them off, and cultivate it. In that way he cleared about thirty-five acres, entirely clear, one might say, and then he is cultivating some that the stumps are not taken out yet.

That on the hillside is in the stumps, the logged off part, he uses that for pasture land, and sowed that to grass after he had slashed it and burned it. He feeds all that he raises there on his place, practically, to his stock, excepting what he sells to the travel. He is keeping a stand on the road, hotel and feed barn, and consumes it all right there. There is a good deal of travel passing his place, going across the mountains to eastern Oregon and to Foley and Belknap Springs. He sells them hay, vegetables, fruit. He is about forty miles from Belknap Springs and thirty-two miles from McKenzie Bridge. He is twenty-three miles from Eugene. There is a post-office right at his place, within thirty steps of his house. He does not keep the postoffice, but it is on his place. There is no Donation Land claim taken right around him there on the McKenzie, the nearest donation claim that he knows of, is seven miles down to Walterville, and was the donation claim of a man by the name of Starman, he believes. He supposes it was settled in the fifties. When he says that about one-third of this land is agricultural, he means after the timber is removed and it is cleared. It is all timbered land right in their section. He thinks the character of the timber there on these railroad lands that he knows is about the average of Lane county. About four million, three and a half to four million feet would be a good average timber claim per quarter section. He does not believe that these railroad quarters there would run on an average of four million feet because the best of it has been bought up by the timber people; but he thinks the unsold rail-

road lands would average about three million feet per quarter section. He does not know that they were taking the land for the timber exactly, but the biggest rush that they had there for timber claims was about 1894 to 1896. The homesteaders would come in there and take up the land, and the companies began to buy. Before the homesteaders would go in, they had no market for their timber, to speak of, before that the timber was not sought after at all. The homesteaders were just burning it up and destroying it to get rid of it, but after that time the homesteaders began to rush in and the timber people began to buy. Most all of the government land that is worth anything in that section of the country has been taken in one way and another, either under the Timber and Stone Act, Homestead Act, or some kind of scrip. There are parts of the government land worth something, but not a great deal, the best of it is all taken, of course. There are probably some pieces that would pay to enter. They are small and scattering. He logged off of several sections there. He bought a part of a section of school land in section 16, logged that off—one hundred and twenty acres, he thinks. Then he bought a hundred and forty acres of railroad land in section 11, township 17, range 1 east, logged off one hundred acres of that, and then he sold the one hundred and forty acres. He logged off this railroad land about 1890, he thinks it was, and sold the logs to the Harrisburg Lumber Company for local consumption by the mills in the valley. That was before they began to ship lumber by the railroad east and to California. That

was before the Booth-Kelly Lumber Company came in and developed the industry. In their part of the country, the Booth-Kelly Lumber Company is the largest timber company, lumber concern, that is manufacturing. Some of these yellow streaks up the McKenzie and the Mohawk are practically level land along the streams, and that seems to be land that was taken under the Donation law, or under some previous settlement law, prior to the time the railroad grant took effect, and it seems to follow the streams, that is about the way they did in those early days. He is now living right at Leaburg, in section 10, which is next to section 9, which is railroad land. He thinks that along the McKenzie river there where Leaburg is, which is shown in yellow, about half of that section, whatever its number is, was taken under some settlement law, either homestead or pre-emption, before the railroad grant took effect. The McKenzie river is a good fair sized stream, about a hundred miles from its source to the mouth, and is a logging stream for about forty miles. Vida is thirty miles from Eugene. It is not in the timbered country, that is in a big burn which was burned fifty years ago. There is a big burn there, about fourteen miles long and twelve miles wide, and Vida is in this old, big burn. It was formerly timber and then burned over. Vida has a post-office and a little store there, and there are a few families —three or four—at Vida. On this burned-off land, and then back on the hills, on the benches, it is pretty much all taken up, all the level land is taken up by homesteaders. When one gets up the hillsides, there would be

little benches of level land—that is what he means by benches; and these benches are from fifty yards to three hundred or four hundred yards wide generally. They are almost level—level enough so they farm them. Some of these benches are two hundred or three hundred yards long, some of them a quarter to a half mile or a mile long, and these benches are frequent as one climbs the mountain. That is what he means by benches, and that is what they mean about benches. These benches are usually covered with timber, excepting where there has been a burn, only in this deadening there, there is nothing but brush, there is no timber left. The timber is all killed and burned off. At the present time, there is nothing on this burn but brush of different kinds—vine maple, dogwood, greasewood, in their native state. There are a few old stubs still standing, very few, though, they are all gone pretty nearly. There are a few logs on the ground, and there is a little small young fir coming up. He had had a little experience or knowledge of second growth fir and of the time it takes down along the McKenzie river there, for these young firs to get to be saw timber, and it takes quite a while. In fifty years, from his observation, the tree would be about twenty inches in diameter, if the soil was good, and its height would depend a good deal on the locality and soil in which it grows. From his experience, if it happened to grow in the right locality, a tree twenty inches in diameter would probably be two hundred feet high. The thickness of this second growth depends on the locality, too. If it is in the right locality, they grow pretty thick, probably

every ten feet. Trees that are twenty inches at the butt and two hundred feet high, can be used for saw logs—the little mills use them, and they are used for piling timber, a good deal of it, and for telephone poles and telegraph poles, piling generally. If a man calculated to live a hundred years or so, he supposes that if he had a forty of that kind of growth, it would be more profitable to keep it rather than to cut it up at that age, but he would think if he wanted to get the use out of it in his lifetime he would have to cut it. Measured by generations of men, these forests would certainly reproduce themselves in time, if they were given time enough and not burned up or cut down.

Whereupon, upon redirect examination, witness testified, that this logged-off land that he had cleared, he sold the timber and retained the title to that land where he is living. That burn is right there at Vida that he spoke of, that big burn around Vida. He couldn't tell exactly, but it crosses about two miles below Vida crosses the river, lays on each side of the river, the river runs up about through the center of the burn and lays on each side of the river, six miles on each side of the river, and it is about fourteen miles long where there is no green timber at all left standing except the young growth, the brush that has come up.

Whereupon, upon recross examination, witness testified, that he was born in Arkansas.

Whereupon, upon redirect examination, witness testified, that he was twenty-one years old and past when

he came to Oregon.

Whereupon, witness was recalled, and upon direct examination, testified, that he applied to purchase some of this railroad land from the Company in 1905 or 1906, which land was located in section 3, township 17, range 3 east, on the McKenzie river, right at the edge of the grant in section 3, township 17, range 3 east, the extreme eastern limit of the grant. He wanted that for a stock ranch, farming and stock raising. There is a fine range all around there in this big burn about which he spoke, and it is level. There is a little timber on it, but very little, probably 400,000 or 500,000 feet on the quarter section. He does not know what the railroad company did with his application. He wrote to the company, made application for it, and wanted to buy some of it, he wanted that quarter section, and the company wrote back that it was taken off of the market so he did not pay any attention to it. He has not the dates exactly. Almost every bit of that quarter section was agricultural land, that is, could be farmed. Referring to "Defendants' Exhibit 295" which shows the lands indicated on this map as owned by C. H. Chick and W. H. Richardson in different colors, he does not know whether this land that he applied to purchase, was north of the Chick tract and northeast of the Richardson tract. He does not know to whom this land belongs but this is now west here (referring to the Chick tract). The land lying south of it, right across the river, he does not know who owns that. Mr. Mason owns the adjoining land to it, laying south, a small tract. He has been all over

the Chick tract and Richardson tract. The land is rough, very rough land, compared with the land that he has, so far as farming is concerned (pointing to the Richardson and Chick land). It is on the south side of the river. Now, this is on the north side, and is a different country altogether, so far as the land is concerned, and is a different formation.

Whereupon, upon cross examination, witness testified, that he wanted this railroad quarter to make a stock ranch of, and then he would have the out-range there for several miles, and probably could get the use of some of that country. East of this, the land is taken by homesteads and fenced. North of it is a homestead, and northeast is a homestead, and people are living there, that is in that burn. After one gets outside of that burn, it is all good timber land. That land was not fenced, but the chances are he would get the use of that for a few years for range. He expected to raise hay and feed his stock there. He would use the range whenever he could get it honestly. He calculated to buy an acre adjoining that he could plow. He expected to fence this quarter section as quickly as he could, and he expected to turn his stock out and they would certainly go onto the adjoining range. He expected to deal in cattle. He has been in the cattle business and thought it would be a success. There was no other quarter section up there that suited him as well as that location, and he was kind of stuck on that quarter section. That quarter section is worth about twenty dollars an acre. At that time, it was not worth so much. At the time he

applied to purchase it, it was probably worth seven or eight dollars.

Whereupon J. M. WITHROW, a witness called on behalf of complainant, being duly sworn, testified, that he is sixty years old, lives at Springfield, Lane County, Oregon, and has lived in that county twenty-one years. He has had quite a little experience in farming in Lane county. He farmed about five years in that county and farmed different tracts. The first farming he did, he was logging, and he farmed just in hay, a twenty-acre piece for eight years, the same piece he lived on there, and he made his hay to log with. That land was situated on the McKenzie river, right below Walterville. Walterville is in section 28, township 17 south, range 1 west. The land that he farmed was bottom land, right near the river. It had been in timber years ago, that piece, but he logged off the land that adjoined it, all around it, after he moved there, heavy timber. He did not cultivate any of the logged-off lands, but the man that owned it, logged it by contract, seeded it and raised grass on it. But the same land since is in cultivation, but it was not, at that time. It has been placed in cultivation since he logged it off. He has also farmed down below Coburg, between Coburg and Harrisburg, two years. There was a part of that ranch that was bottom land, and part of it what they call prairie land, out in the prairie, level, valley land. He farmed two hundred and forty acres there. He thinks that was taken up under the old Donation law and belonged to some heirs by the name of Barger. He leased the place. He does not

know and couldn't tell where that was located in regard to section. The products raised in this country generally, up out of the valley, are hay, oats, barley and wheat. Of late years, they have raised lots of fruit, but at the time he farmed there, there was not so much fruit. The fruit industry has been largely developed in recent years. There is a big orchard on the place he had. It had lots of fruit, but the neighbors didn't have. There weren't many orchards there that were bearing. Referring to "Defendants' Exhibit 259," and locating Walterville thereon, he has been all over that whole township 17 south, range 1 west. He has lived there a long time, and hunted a good deal when he was not logging, and went all over it. He is not acquainted about Wendling, not quite so far up as Wendling, in township 16 south, range 1 west. He is well acquainted with it up as far as Marcola, which is about a mile south of Wendling on the range line. He has been about six miles from Wendling, pretty near anyway. He is not more acquainted with the railroad lands in that township 16, range 1 west, south of Wendling, than he is with the Government land, the settlers' land. He is acquainted with it all, has been all over it, and is generally acquainted with the lands there, and with the lands in township 16, range 2 west, that is, west of Marcola, and in the vicinity of Donna, right on their road going up through that country. He is not acquainted with any of the lands in township 18 south, but has been in the Fall Creek country, all along, but then he did not know the ranges, or numbers, or any thing, just went through there. He has been north of

Fall Creek in this territory with the green markings and the white markings, in township 18 south, range 1 west, he has been all through there, and is well acquainted with it. His work runs right up the river, up the McKenzie river, right on up in township 17-4, 3 and 2 east, and township 16-4, 3 and 2 east, all of that. He had a piece of land in township 16-2, his homestead was in that township. The grant does not extend beyond range 3 east in this locality. The railroad lands do not extend beyond that. He knows about where they are. They run into township 17-3 east, about two miles into township 17-3 east, as a general thing. That has been his beat for seven years, he comes pretty near knowing where they are exactly. He was Fire Warden four months in the year for seven years in there, in that McKenzie river territory, in those numbers he gave there. He was Fire Warden for the McKenzie Timber & Lumber Company—Michigan people, and it would take him out over the territory—he would say, sometimes. The percentage of lands in this area covered by the green markings, that he would consider suitable for cultivation would be owing to how far one would come down the river. One comes down as far as Walterville, and from that east of his beat there, he would say that the land there would go about 50 per cent that would be suitable for cultivation, that is, could be rendered suitable by removing timber and brush, or anything of that kind that should be on it. On the south side of the McKenzie river, in township 17, range 3 east, the country is broken, very broken and mountainous. There are lots of good

little places in there, but of course that would be hard to get to. It is broken country, while on the north side, it is good—practically good. There is a distinction between the north and the south side of the McKenzie river in the lands. In range 2, township 16, the land runs good and it runs good in township 17-1, and through there on the south side, but in township 17 south, ranges 2 and 3 east, there is a rough spot right in there that would not run so good. There are farmers and settlers engaged in farming all over, with the exception of township 17 south, range 3 east, there are but three or four in that township, there is more than that, too. Township 17 south, range 3 east, is not owned nearly solid by the Booth-Kelly Lumber Company, they own some in there, but this company he worked for owns a good deal, or most of the land. That township is practically owned altogether by some of these companies. He owns some land in there, his daughter owns some land in there, and there are a few odd pieces scattered around in there, but, generally speaking, it is owned by big companies. They obtained a great deal of that land, the even sections, by scrip, he thinks. These settlers in there raise a little stock, and hay, and garden, and some fruit, commencing to raise fruit, it is a good fruit country, they expect it to be good for fruit in there. In his opinion, if this land was divided into one hundred and sixty acre tracts, it would, on the north side, average about what he has stated the general average of plow land is in that area. It would not, however, in this one township, that would be spotted, that township would

not go more than one-four, if it would go that, but the other townships, the one above it, that is past the railroad limits, but one would make a hard climb to get up over the river on top, and after one would be on top, if the road was cut out there, for three miles at a stretch, one could run an automobile through the country, it is practically level after one gets through there. That is good country when it is logged off. That is the best belt of timber there is on the McKenzie river, and is claimed to be the best belt, and is where one could run the automobile. If the trees and logs were cut out, an automobile could be run in that country through three miles of his trail. The way he puts it, it is not steep enough to stop them. But that is back away out of the railroad limits, and is very heavy timbered, and is east of the grant, extends beyond the limits of this grant. The railroad grant only runs to the center, or hardly to the center, of township 17, range 3 east. There is a railroad section which joins a piece of his land there on the west. It was a timbered piece he got. His homestead was in 16-2, and this piece was in 17-3. He had his homestead seven years before he got title to it, and sold it to lady whose name he cannot recall. There was a lady who came here to Portland, and sent some man out to get big pieces of timber in there, and she got it, but he could not call her name at the present. She was from the East somewhere, he thinks from Michigan. He believes it was Mrs. Potter Palmer of Chicago, Illinois —he would not be positive, but he thinks that is the name. She bought lots of timber there.

Whereupon, upon cross examination, witness testi-

fied, that he was paid as Fire Warden for the McKenzie Timber & Lumber Company, as they called themselves. They were Chick, Morton and Lewis, three or four of them, he cannot remember them, but they belong in Michigan, and part of them in Portland. They have, in township 17 south, range 4 east, 16,000 acres of these timber lands up in that country. They bought homesteads, they bought them and people deeded them to them and moved away. They sold them out to them. He presumes they were buying them for the timber. There were a good many of them, these homesteaders, who were young men, and quite a number of them were not. But those who had families were the same as he was when he held his down, he supposes. He had a family. He sold his land to this lady he was speaking about, to Mrs. Potter Palmer, and got two thousand dollars. He sold his land twelve years ago, but has forgotten the date. His homestead was in section 10, township 16 south, range 2 east, and was the northeast quarter of section 10. His nearest postoffice was Vida, about five and a half miles away. Vida is a stage station. There is a stage which runs up the McKenzie to Blue River, and also from there to the springs. This was a stopping place for them to take dinner, change horses, and so on, referring to Foley Springs. Blue River is the point that they all call it, Blue River stage, and when they get to Blue River, there is another stage which runs from that to the springs. They cannot make it in a day, so they change there and come out after night with the last drive. That is all timbered country

up through there, except in township 16 south, range 2 east, and was all heavy timbered country until this fire ran through it. That timber was burned when he came to this country and they claim it was burned about fifty years ago. There are young firs just in spots, in little creek canyons, there are streaks of fir growing up, and around the edge of the heavy timber there is fir growing up, but there is not all over. He does not know the reason why it does not seed with fir all over again. They do have fires in this burn occasionally, different parts of it. It was one of the great dangers that as a Fire Warden he had to guard against, that of fires being set in this dry burn, and then he had to stop them before they got to the main timber or they would cause them lots of trouble. Young fir timber grew there once, and it certainly would again if they would let it alone, if the fires were not set out, he thinks. These fires are from hunters and from travelers and from campers mainly, and fishermen up that river. He entered a timber claim there in township 17 south, range 3 east, and paid the Government so much an acre for it, under the Timber and Stone Act, six years ago. He thinks he got title to it under the Timber and Stone Act, in about a year and a half. He did not live on it at all, he had to go and look at it. He went all over it, took two men as witnesses, found the corners, had it cruised or estimated, and it has been cruised now by other parties twice since that. He owns it yet. It cruised about four million feet fir timber, good saw timber, and he supposes it is worth four thou-

sand dollars. His daughter bought some timber, and her husband had several pieces of timber, he got killed, and that left it to her. Her husband was a timberman, worked in timber, always had ever since he was a boy, and he had a pre-emption piece, and a homestead and timber claim piece, all timber. He does not know what they would run, those three quarters. One of them, he believes, was cruised last week and they cruised it at eight million feet. That was a good fair piece of timber. That was a piece he took under the Timber and Stone Act. He took that, he thinks, seven years ago. He does not know when he took his homestead, but he took it before that, a good while before that. It was not adjoining that, but was over in another township entirely, in a timbered belt. It is all timber up there, they have to take it in the timber if they take it. The rush for timber, to get timber land, occurred about 1894 and 1895, and it continued and has been pretty active until the last two years when it has been rather quiet. It was pretty active about 1906 and 1907. He could not state the year when the Booth-Kelly Lumber Company went into that country and started their sawmills. He was right there, but he does not know exactly, but it was about twelve or thirteen years ago. He does not know that after they bought up extensively and began to manufacture lumber and ship it out to California and east, timber had a better demand. He doesn't know that that cut any figure with it, because what little they cut didn't cut much figure with the price of timber. These companies that came in is what raised the price of timber

and made it active. He thinks Mrs. Potter Palmer, who bought his timber, had a considerable number of acres up there. He thinks right there in that locality she bought about two thousand acres. There are no government quarter sections there until one gets into the reserve. The timber and everything is taken that is worth taking, practically all but the railroad land, it lays there. In his judgment, the best quarter sections of this railroad land up there today, counting the timber and everything else that goes to make up a valuable quarter section, the best ones are worth anyway five thousand dollars, if one would go to pick any of them out, to the quarter. These railroad quarter sections, take it over those townships that he beat through there, that he went through so much, they would average three million feet anyway. He has not done a good deal of logging, not very extensively, he logged for seven years. He logged by contract. He had a team and put in logs for so much a thousand. He raised his hay to feed his horses when he was logging. He raised his hay on a piece of land right there where he lived, near Walterville. Walterville is quite a little village, has a store, blacksmith shop, postoffice, drug store, two hotels, two big barns that keep travel, and there is quite a lot of people live there in the town, and is sixteen miles from Eugene, on the stage road to Soda Springs and Foley Springs, and there is lots of travel there in the summer time. Those places are mountain resorts where a great many people go constantly. People come in there from Kansas City and spend the month of August, from San

Francisco, and come from everywhere, all over. It is a wooded country where they hunt, fish, and have a rest. It is good fishing and there is good water. He lived down near Coburg when he farmed, in a part of the valley which has been settled a long time. He came from California to Oregon, but was born and raised in Iowa, came to California, and from there to Oregon, and is now living in Springfield. He is Fire Warden, and then goes through the woods, hunts and traps, and so on, through the winter season, and he might be said to be a woodsman and timberman. He has been in the woods the biggest part of his time for twenty years, all over those townships that he showed, and has been all through them in all directions.

Whereupon, upon redirect examination, witness testified, that his homestead was in section 10, the northeast quarter of section 10, township 16, range 2 east, right north of Vida, on the headwaters of Gate Creek. His daughter's timber was located in sections 10 and 24, township 17 south, range 3 east. She had two pieces. It was within the limits of the railroad grant—both pieces. These settlers, some of them farm extensively —big farms—and others again are what they would call new comers, and haven't very much grubbed out yet, but they are at work on it right along. He couldn't state what they would average, he means back on the foothills. They have settled in township 16 south, range 2 east, since this grant was made. The government land in this burn is practically all taken, there is probably a piece or fraction occasionally that is not. They have

built houses on them, have cleared out patches, some of them not more than one acre, and some of them ten or fifteen acres, back for three miles from the river. They are comparatively recent settlers in this burn. They have been there—some of them have been there ten years, and some of them haven't been there only the last three years—it has been settled up, more extensive settlements have gone in.

Whereupon, upon recross examination, witness testified, that he had cleared about three acres on this homestead, and he cleared that three acres the first two years he had it, and then that was all the clearing he did. He did not reside on the homestead all the time. He had a family, and in school months he would have to come out of there. There was no school. He would come down to Walterville where there was a good school, fifteen miles from his homestead and would go up in the summer time and take his wife and children and spend the summer up there, and raise a garden, and when fall came on they would move back to Walterville. He did this every year, but he always got a permit. He did not get this permit as much to enable him to make a living elsewhere, but it was to get out to the school. He got the permit from the officials of the government, the local land office. They would give him permission to be absent from his quarter section. He could be away six months at one time, if he wished. He kept that up for seven years. He kept that up for five years. He was in there on the place, back and forward still, on still afterwards, after he did prove up. He had no trouble in

proving up, he had no contest. The other homestead entrymen up in that country, some of them had families and did about the same way he did, some of them would have to come out of there, there were not enough of them to get a school in there and they would have to come out.

Q. These single men that went up in there, and took homesteads and then the lands afterwards turned up, on commuting or on final proof, sold to these timber companies, how did they manage their settlements—these single fellows, how did they do?

A. Well, they would just go in and out now and then, do a little work and come out, and be gone and go back.

Q. I have understood that a good many of those young fellows were sawmill hands, and young fellows from the towns, that they would go and file on a good piece of timber-land, and put up a little shack of shakes, and put a bunk in there, and take a few canned goods out, and a little bacon, and stay a night or two, and then in the spring put in a little garden, sow a little stuff, and then go away, go back home. Is that the way that was done by a lot of those single fellows?

A. Well, no, not at the time I was holding mine, there was none of those sawmill boys or anything of that kind in there. There were settlers, and men that came in there off of ranches in the valley, and one place and another, and take them up as a place, young fellows.

Q. And then would go back to the valley?

A. Yes, sir.

Q. Well, now, as a matter of fact, don't you know, Mr. Withrow, that people, after this timber rush as we call it, went from Salem and Albany and Eugene and all around?

A. Oh, yes, I think they did.

Q. And undertook to enter these lands in the best way they could, some of them under the Homestead Act and some of them under the Timber and Stone Act, so they could get a quarter section?

A. Yes, I guess they thought they was entitled to it.

Q. And they made a form of complying with the Homestead law?

A. Yes, sir.

Q. Where they didn't take it under the other law?

A. Yes.

Q. And they kept up their business at home in the towns, until they finally commutted?

A. Yes, sir.

Q. Isn't that the fact?

A. Well, there wasn't very many of them commutted.

Q. They generally saved their $2.50 an acre?

A. In Cleveland's administration, you know, there wasn't enough money for a young man to get hold of

to commute.

Q. I understand times were pretty hard during that time.

A. I think so. I found it out so.

Q. So they had to stay their five years?

A. Yes, they had to stay it out.

Q. Well, they stayed it out by going up there every six months, and then getting money working out, and finally got their patents?

A. Yes, sir.

Q. But you cannot do that now? You have got to comply with the law?

A. Well, one reason you cannot is there ain't any timber to take in that country.

Q. If there was plenty of timber, they would do the same thing?

A. They would be foolish if they didn't, if they could get it that way.

Q. They have got it that way, a good deal of it?

A. Well, that is the way you have it figured out.

Q. Is that right, Mr. Withrow?

A. It is with some of them, but I don't know as the majority would go that way, but there was now and then in that timber entering business we had a fraud occasionally, as well we do in everything else.

Q. I know, but they didn't think that was a fraud?

Wasn't that the custom of the country?

A. Well, not entirely, no. They didn't want to beat anybody, only some of them—

Q. That was the custom of the country at that time?

A. It seemed to be. It was a rush for the timber anyway.

Q. That is right?

A. Yes.

Whereupon, upon redirect examination, witness testified, that these people who were living in there who made their homes there for from ten to twenty years, acquired title to the land and those that have been there that long have not only homes they have made a living on, but they made a little money. They acquired their lands by homestead, lived up to the requirements of the Government laws. These men, who made a pretense of residence on the homesteads and then selling to timber companies, not living on them as he did, after they got the title, there was nothing in there for them, and they stayed out where they could get work. Now in that country, there is not a road in it back in there, only trails, pack trails, and so on, it is not fit for a fellow, really, to live, without enough of them would go so as to make a road out, to do something. Several years ago the railroad company sold some few pieces in that locality to settlers, in the vicinity of these lands that he is speaking of. It must have been ten or twelve years ago that they sold it. These people who bought from the railroad com-

pany used the land according to the location of the land; some of them would buy it for the timber that was on it, he supposes, and others bought it for homes. There are a good many of them who bought forty or eighty acres from the railroad, that was in those burns, and even where it had quite a little timber on it, and slashed it off, and made them good homes, and lived right there. That is what one at present might term a remote region. The nearest railroad is at Springfield, down in there it is all the way from twelve to twenty miles to a railroad.

Whereupon JAMES W. KINMAN, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty years old and lives two miles from Mabel postoffice, Lane county, Oregon, and has lived in that county ten years. He has a ranch, is a farmer, and has been engaged in farming on the same place in section 28, township 15 south, range 1 west, ever since he has been in Lane county. He has eighty acres of good land which, in its native state, was timbered land. Part of it was logged off after he got it, and part of it was logged off before. It had been slashed and the timber burned and cleared out. He does not know how long the man had lived on the place before he got it. It was patented land. The man that he bought of took it as a homestead. Witness sold the timber that he took off of the place to the Hyland Lumber Company. He applied in 1905 to the railroad company to purchase one hundred and sixty acres of land in section 21, which joined his land and he wanted to make a ranch out of it. He does not know what was done with his application, he

never got an answer. He wrote to the Southern Pacific Land Office at San Francisco, California. He is familiar with the business of farming in the vicinity of his land, and in that part of Lane county in which he lives. They raise grain for hay, oats, vetch, cheat hay, clover, fruit, all kinds of vegetables, garden truck, and the soil is productive. Mabel is shown on "Defendants' Exhibit 259," and is right where he lives now. That is where he bought there near the postoffice as it was there at that time, but they have changed it down to the mill now. The green markings on this map, he understands, represent the unsold lands of the Company, and the blue represents lands that have been deeded. He is acquainted with these lands from Shotgun Creek, shown on this map, and he has been all over that township to the fork of the creek, what they call the forks of the Mohawk, from the summit down, both on this side, from what they call Mt. Bunker south of Mabel. He has been over that area, about four miles up to the summit, what they call the summit, between the Calapooia and the Mohawk, and is acquainted with the lands there, that is on the north side of the Mohawk, and on Shotgun Creek, which runs through township 15 south, range 1 west, and he has been pretty well over this country, pointing to the northwest portion of township 15 south, range 1 west, on the north side of the Mohawk. He is acquainted with that territory west of Shotgun Creek, but was never back in that country but once, north from Mabel, east from Shotgun Creek, that would be the northwestern portion of township 15 south, range 1 west, as shown

on this map. He is acquainted in township 14 south, range 1 west, down to the summit. There is a very small portion of railroad lands in that township. Township 14 south, range 1 west, is beyond the summit and he hasn't been there. He has been up what they call the east forks of the Mohawk, perhaps ten miles from Mabel. Section 29, township 15 south, range 1 west, half of that or more, in his opinion, could be rendered suitable for cultivation; section 19 is rather rough and broken after one gets back away from the creek in section 29, half of that or a little more, and in 19 there would be perhaps about one-fourth, that could be rendered suitable for cultivation. All this land with which he is acquainted, from the Shotgun east to what they call the summit, between the Mohawk and the Calapooia, what he has been over and noticed, if it were cleared off would be half so that could be farmed. There are settlers, people engaged in farming, in section 21, but back of that there are none. Similar lands are farmed in that general community, and the same averages would hold good if the lands were divided into one hundred and sixty acre tracts.

Q. In your opinion, Mr. Kinman, what has been the effect of the railroad's policy in handling this grant, failing to fulfill the conditions by selling the land to actual settlers in 160 acre tracts at $2.50 an acre—what has been the effect, if any, upon the development of this community?

A. It has kept settlers out.

Q. By settlers, what do you mean?

A. Why, people would have made homes out of it, if they could have gotten it.

Q. Do you mean engaged in farming there?

A. Yes, sir—orcharding.

Q. Now, the settlers that are over there in that country, Mr. Kinman, how have they developed their land? Just describe it.

A. Well, there is two families living on 21, been making good livings, and there are six families of us living in 28, and that is south of 21, and east of 29.

Q. Have they been earning their support from the lands that they had in these sections?

Whereupon witness testified that these settlers had lived there ever since he had been there. There is some pretty good timber on section 21, and there are open, fairly open ridges, and some swamp, land covered with hazel brush and small stuff in these lands in sections 21 and 28 that he has mentioned. This area he has described is, part of it, heavy timber, and then there are open countries in there. He does not know what it would run. He never cruised them and does not know as to that. He came from Iowa.

Whereupon, upon cross examination, witness testified that section 21 is a railroad section, and there are

two families living on that section. He thinks they bought the title from the railroad company. They were living there when he came there, he thinks one of these, Van Meter has eighty acres, and Smith has one hundred and sixty acres, but he does not know what they paid for their land. It was before he came there. He understood Mr. Smith to say that he had about forty acres of his hundred and sixty acres cleared, and the other man has twenty or more acres cleared, by cleared he means ready for the plow. These people had four or five head of cattle. At present, he has only one pony on his place. He has been in the cattle business some up there, he has been keeping them on his place—had fodder. His place is all fenced, and he does not avail himself of the outside range, but some of his neighbors use the outside range. They raise up there to sell, potatoes, garden truck and apples, they have a market for this at the sawmill, it is the Coast Range Lumber Company now, it used to belong to Hyland Brothers, but it has changed hands, also a mill at Wendling. It is not a great ways to Wendling. The place there at Hyland is now called Mabel—there are thirty or forty houses at Mabel, and working in the sawmill when the mill is operating, there are at the present time about a hundred and fifty men. They are rebuilding a big mill at present. They have not been running steady for the last two years. They ship their lumber out by railroad, the Southern Pacific Company Railroad comes up what they call Hyland siding, and the Coast Range Lumber Company has its spur road up to the mill and its woods. That is not the railroad that

is building over from Natron to Klamath Falls, but is a branch. That whole country there is pretty much a timbered country. Going to his place, he does not go to Wendling. He first reaches the valley land, about a mile below him, on the Mohawk. He does not know how long the Mohawk has been settled with Donations and early settlers. The settlers were there when he came, long before he came. He never took a homestead in this country and never entered any land under the Timber and Stone act. He bought his eighty acres from a man who had a patent from the United States, and paid nine hundred dollars for the eighty acres and, in his judgment, it is now worth thirty-five hundred dollars. This unsold railroad land that adjoins his, taking it as a whole, by quarter sections, timber and all just as it stands, he does not know what it is worth, he is not a timber cruiser, there is timber on this in places, and part of it is saw timber. He does not know about how much those timber lands run in timber, per quarter section, on an average, he never cruised any. Not having any experience in cruising, he would not know how much timber was on a quarter section of this railroad land, but there are patches of heavy timber, and then there are open places, and the land in section 21 would be worth more if the timber was off than the timber would be worth. The timber and brush keep grass from growing. He means that if a man owned the land, it would be better for him if there was no timber on it, if it was cleared land. If the timber was off, it would be worth more for everything than it is with the timber on it—the land would be worth more.

He could probably sell the land today more for the timber than for the land, perhaps, as there is timber on it. There is a demand for timber. Principally on the south part of it, this timber is second growth, on the northwest part of section 21, it is bigger timber. By second growth he means limbs, small timber, timber that has not reached its full age. Second growth is not old growth timber. There is smaller timber, from little stuff up to two or three feet in diameter. He does not remember the largest fir tree in diameter in that country of which he knows, but he expects that some of those fir trees are six to eight feet in diameter, and there are several that would be as much as six feet where they would be cut off at the ground. When they are cutting this timber for logging purposes, they do not cut them right down at the bottom, sometimes they cut them as high as one's head, six or eight feet high, and use a spring board to stand on to saw, and they learn how to saw so that the man on the spring board can protect himself when the trees fall. That is the way these timber men manage to cut these trees down for logging purposes, and that is called "standing the spring board." They know by the shape of the cut what slope to give it to make the tree fall in a certain direction. He had done that kind of work, but most all of the farmer boys in this country have not done that kind of work. There are lots of them that live in that timbered country who do not work at it, lots of them do not work much at anything. He applied for one hundred and sixty acres of this land in section 21 about 1905, wrote to the company

to know what it wanted for it, and if it would sell it, and he addressed his letter to the Land Department of the Southern Pacific Company in San Francisco, California, and got no reply. "Q. You never applied to purchase any of this railroad land under this Act of April 10, 1869, where this $2.50 an acre business is being used by people who apply for lands. A. No, I just wrote to them to see if they could sell, or what I could get it at." As a farmer, he wanted to buy it and wanted to pay and would have paid a reasonable price, what he thought was right.

Whereupon, upon redirect examination, witness testified that the land, this piece of land that he was speaking about, would be more valuable than the timber and would be better with the timber off, and if a man should purchase that land, the best proposition, the best way to handle it, would be to sell the stumpage and keep the land. That was the land he applied to purchase and that he wanted for farming, and he intended to clear it up and make a ranch out of it.

Whereupon, upon recross examination, witness testified that he intended to sell the stumpage or get the timber off and sell the timber for whatever he thought was right, and then burn it over and seed it to grass the first year or two, and work it up that way. At that time he could have gotten for timber stumpage, per thousand feet, about fifty cents, and he estimated that the timber stumpage would bring forty to fifty dollars an acre, perhaps, taking it on the whole hundred and sixty acres.

Q. Well, if you could have got that at $2.50 an acre and then sold the timber for $40 or $50 an acre, you would have made a pretty good thing, wouldn't you, and had the land left?

A. Well, I would rather have had it with the timber off; if it had been cleared, it is worth more.

Q. You would have made a pretty good thing, though, wouldn't you?

A. I wouldn't have made such a great thing after paying the price to get the stumps out and the logs all off.

Q. No, but if you had just stopped, and hadn't put the money back into the ground, you would have made the difference between $50 an acre and $2.50 an acre, wouldn't you?

A. Well, there would have been some difference, yes.

Whereupon, upon redirect examination, witness testified that he had lived in that community ten years, and during that time the railroad company had sold lands up in that section. Louis Van Meter bought a forty in section 21 since then, that is all he knows of in there. He does not know of the company selling to any other people who desired lands for farming purposes. Booth-Kelly Lumber Company owns a good deal of land in there, but he does not know whether they bought it since then or before.

Whereupon, upon recross examination, witness tes-

fied that Louis Van Meter sold his forty that he bought from the railroad company sometime ago to a man for orchard purposes for eight hundred dollars. There was not very much timber on it. Van Meter paid something near four hundred dollars, he thinks, but he does not know.

Whereupon, upon redirect examination, witness testified:

Q. Mr. Kinman, if the Railroad Company have only a $2.50 interest in this land, and are permitted to keep it and sell it at the increased price, they would make the profit?

A. Yes, sir.

Q. Off the land just the same as the individual would make the profit?

A. If I had bought it and I had sold the timber, yes.

Whereupon F. M. WILKES, a witness called on behalf of complainant, being duly sworn, testified, that he is thirty years old and has resided in Corvallis, Oregon, since 1907. He is county engineer of Benton county, and incidentally surveyor in the employ of the Government during the field season. He is acquainted with the farming business in Benton county to a limited extent. He has never farmed in that county, but was raised on a farm in Washington county. Exactly the same conditions do not exist in the two counties so far as farming is concerned. Washington county is a rich county and has a different soil entirely. Benton county is very spot-

ted, has more of a spotted soil, and he would say is not so productive. However, Benton county seems to carry off the blue ribbon in the state exhibits. His business as surveyor and engineer carries him to the homes of farmers and he has had an opportunity to observe them largely, that has been his business since 1908. He was elected to the office in 1908 and has occupied it continuously ever since. He notices that Corvallis is marked on "Defendants' Exhibit 259," and that the green markings on that map indicate the unsold lands of the Oregon and California railroad land grant. He is intimately acquainted with more or less of these unsold railroad lands. Once in a while, there is a small river lot in through there (pointing to map) and he is more intimately acquainted with that than he is with the lands farther out. Most of this land in here (pointing to map), he has been in contact with, one time or another, surveying lands around near it. In township 14 south, ranges 5 and 6 west, he thinks there is a small amount of land, that is in here, Bellefontaine, Glenbrook, Monroe, country in through there—there are small amounts of lands that are within that area, those townships, 13 south, ranges 5 and 6 west, that he is fairly well acquainted with. Township 12 south, range 6 west, he believes the biggest part of that is in the Wagon Road grant. He notices the yellow markings which represent lands that were lost to the grant by reason of prior grants and entries. In townships 10 and 11 south, ranges 5 and 6 west, he is pretty fairly well acquainted. He never had any occasion to work in range 7, the west half of 6 and

7, through township 10. Benton county begins in township 10, near the north line of 10, and continues to the north line of 15, below the south line of 14. He is not very well acquainted with the west parts of those particular sections, or particular townships, from township 10 to township 14, ranges 6 and 7 west. From 10 to 14, townships south to range 5 west, there are a few isolated tracts in there, all those are desirable farm lands, at the present time these lands are covered with more or less of river bottom growth, fir, white fir and ash, maple and kindred river bottom, typical river bottom growth, and that would be very desirable for farming lands if opened to entry, he would think. Similar lands to those are farmed in that district all around. They are fractions which have been left, legal subdivisons which are left, after the donation land claims were taken up, and are small, usually very small fractions that lay contiguous to the donation land claims, and in no instance that he knows of in those particular townships stated are they more than small fractions of fifteen or twenty acres, along there—very small—but when one gets over in from townships 10 to 14 in range 5, which is all within the grant, there are very few only isolated tracts in those townships. They would be all suitable for agricultural purposes, and they lay within the bottom and on the lower foothills. From township 10 to township 14 south, in range 6 west, one is beginning to get out in the end of the foothills, or into the more mountainous country, and the agricultural lands in that range of townships embraced within the boundaries of the county would

probably average 50 to 60 per cent that could be cultivated to advantage. In range 7, from township 10 to township 14, he has not as accurate knowledge of that, as he has of the other, for the reason that it is mostly timbered and a great deal of it unimproved lands, and he has not had occasion to be in it a great deal. But from the observations that he has made in through there, a lower percentage would be available for cultivation, not over one-third. He has not the acquaintance with that land that he has with the land further in the valley, for the reason that there is not nearly as much surveying within that particular part of the country as there is out in the valley. That covers the lands with which he is acquainted in Benton county. If divided into one hundred and sixty acre tracts, this average would generally prevail, with the exception of probably a few isolated cases that it would not, perhaps, due to the locality of the country, steep hillsides, or something like that—more or less. He believes that it would, though, throughout. Lands similarly located and situated, with similar soils, are used for farming purposes successfully in that locality. There are farms more or less all through them. He knows the general character of the country there, as one sees it from Corvallis, looking west both in a northerly and southerly direction, and can see well up on to the summit of the Coast Range there. One can see the lower foothills, the outer foothills ranging back four or five miles from the main part of town there, and beyond that one cannot see but very little of the Coast Range, in fact, one cannot see any of the summit of the

Coast Range along there at all, only in special cases like Mary's Peak, or some of those high range peaks, some of those high points. A person standing in Corvallis can see, in that timbered country there, on the east slope of the Coast Range, here and there patches of cultivated land, with grain growing, that is true to the northwest. The land to the west is up Mary's River, and that is within the boundaries of this Wagon Road grant, and outside of the O. and C. grant, but that is mostly donation land claims. They were taken up there in the early fifties, donation land claims were, and, of course, they are more or less cultivated all through. That land on either side of the railroad, as one goes to Yaquina Bay, a large part of it has been burned over. After one gets out beyond Harris, the little station of Harris on the Corvallis & Eastern, beyond there it is more or less burned over, it has been burned over for a number of years. That land is of the same general character as the land north and south of it, excepting for the fact that the timber has been burned off. They are now selling that burned over country, and people are going in there and making use of it to quite an extent. Those farm lands are pretty extensively taken up.

Q. Don't you remember that somebody bought that wagon road grant and has been distributing it in small tracts to settlers?

A. Yes, they have been selling it out of late years, to settlers all through there, and there is a good many

settlers in there.

Whereupon, upon cross examination, witness testified, that he was born at Hillsboro. These foothills west of Corvallis four or five miles were pretty well taken up into the hills under the Donation law, and then there was a fringe of fractional railroad forties, twenties and eighties in the foothills just back of that adjoining these donations. Within the valley the donation land claimants were allowed to take up their donation land claims in any shape, and the result was there were a number of fractions, and some of them were not appropriated, he supposes, at the time this grant was made. Most of the lands in the foothills, inuring to the company under this grant, within a range of four, or five or six miles from Corvallis, have been sold a good many years ago to these farmers. There are only a few isolated tracts in there, just small tracts. When one gets further, back seven or eight miles from Corvallis, then one begins to get into the railroad lands, and some that have timber on. One begins to get into the heavier timbered country, with the exception of this burned area, which he believes is principally covered by this Wagon Road grant, and that was at one time timber land. He believes that Mary's Peak is four thousand feet, something like that, in elevation. Corvallis is a town with a population of nearly five thousand, and is the seat of the Oregon Agricultural College, formerly a college maintained by the South Methodist Church. It is only within comparatively recent years that it has become a state institution. Corvallis has been a town, and

is an old settled community from as early as the fifties, and he thinks that it was a little earlier than that. It is at the mouth of Mary's River, at the junction of Mary's River and the Willamette, and he thinks the railroad was built to Corvallis about 1879, that is further back than his time, but it is a long time anyway. The road known as the Corvallis and Eastern has been in existence from Yaquina Bay and through Corvallis on east beyond Albany for more than twenty-five years, it was probably that long anyway. It was first started as the Oregon Pacific, or its predecessor, by Colonel Hogg. The road went into the hands of a receiver at one time and was sold for about $100,000, he knows that is its history, it hardly paid its receiver's certificates, it did not pay anything. As far as he knows, these railroad lands, up to 1905, were being sold to whoever wanted to buy them. He had never had any occasion, had never heard anything along that line, never had any interest in railroad lands, for the reason that at that time he was going to school. There is a large body of railroad land belonging to this company which remains unsold in Benton county. He has never read any statistics of the amount of land that there is in there. He has never cruised any of these lands, not any of this land grant. He has cruised considerable lands in the county, has done cruising at one time and another for the county for assessment purposes, but never cruised any of these railroad lands for assessment purposes. They were already cruised for assessment purposes, the timber lands, before he went into office, practically, so that he would not

make an estimate on the time that it was cruised. When the timber became an object of merchantable transaction, the county began to consider about getting it cruised so as to tell how to assess it. He thinks that a dollar a thousand is probably the stumpage value of these timber lands at the present time. He has not heard of any timber being sold in Benton county for quite a long while, but that was the prevailing price at the time that he knew anything of it. A good timber quarter in Benton county will run from two to eight or ten millions to the quarter, there is very little that goes ten million. He would say probably the average of timber lands in Benton county would nct be over three or four million a quarter section. He has never applied to purchase any of these railroad lands and he has never taken a homestead. He has never used any of his rights whatever.

Whereupon, upon redirect examination, witness testified, that this railroad that was constructed from Yaquina Bay easterly through Corvallis and Albany on to Detroit, in the Cascade mountains, was purchased by A. B. Hammond, he believes, and he understood that one of the conditions of the sale was that he was required to reconstruct the roadbed and the bridges and ties, and put it into shape for operation. He does not remember who bought it from Mr. Hammond, after getting it into operation. The Southern Pacific is the supposed operator of the road, but the Corvallis & Eastern Railroad Company, he thinks, has the control, that is, that is the corporate name of the company, he thinks. He thinks that it is a subsidiary company, but the name and corpora-

tion of the Corvallis & Eastern, he believes, is preserved. It is operated as part of the Southern Pacific system of railroads, that seems to be the general opinion. He does not know what they paid Mr. Hammond. When he says that Mr. Hammond bought this railroad, he means Hammond and some of his associates, Hammond was probably the main man in the deal.

Whereupon, upon recross examination, witness testified, that he believes, if he is not mistaken, that Hammond operated the road as the Coast and Willamette Valley railroad first. He thinks that when Hammond sold it, it was then organized under the name of the Corvallis and Eastern, which now operates it, sells tickets and handles it. He understands that it is a subsidiary company, and a part of the Southern Pacific system. The summer business is pretty good to Yaquina Bay, there is fair travel over the road all the time, fair passenger business, there is not a great deal of freight business, and never has been, so the old timers tell him, any freight business over that road since the time that Hammond bought it up. Hogg tried to make a port at Yaquina Bay, had a line of steamships in there at one time, but he does not know that the expense of operating the steamships broke the road.

Whereupon, upon redirect examination, witness testified, that he had been out east from Albany up to Detroit, a few times, but he would not say as to the business of the Corvallis & Eastern there. He does not believe they do more business there than they do on the

west end of the road. They do more freight business, possibly, but he would not say that the passenger business was as much, he does not think it is, a good deal smaller trains run anyway. That road is the connecting link between Corvallis and Albany, and is practically the only railroad connection in there at the present time. The Oregon Electric is coming in now, but the rails are not laid that far west yet. It crosses the Willamette River at Albany.

STIPULATION.

Mr. Townsend: It is hereby stipulated that R. G. Balderee, if called as a witness, would testify that he has been a resident of Oregon for more than twenty years, living most of the time in Lane County; that he is familiar with the lands in Townships 16 South, 1 and 2 West; 17 South, 1 East and 1 West; 20 South, 1 West, and 21 South, 1 West, in Lane County; also Township 14 South, 7 West, in Benton County, and Township 8 South, 7 West, in Polk County; that he has done considerable cruising in those districts. He will further testify that, of the lands in 8 South, 7 West, 50 per cent could be subjected to cultivation after being cleared of timber and the stumps removed; that of the lands in Township 14 South, 7 West, 65 per cent could be cultivated after the land is cleared by the removal of the timber and stumps; that of the lands in Townships 16 South, 1 West and 2 West, 80 per cent can be cultivated after the timber is removed and the stumps taken out; that of the lands in Townships 17 South, 1 West and 1 East, ap-

proximately 50 per cent can be cultivated after the land is cleared of its timber and the stumps removed; that of the lands in Township 20 South, 1 West, approximately 70 per cent can be cultivated after the timber is removed and the stumps taken out; that of the lands in Township 21 South, 1 West, approximately fifty per cent can be cultivated after the timber is out and the stumps removed.

His general testimony as to the character of the land and the stand of timber, and other facts and circumstances upon this general subject, would be substantially the same as the testimony of O. J. Lawrence as to Lane County; and the same general testimony would apply to his judgment as to the lands in 8 South, 7 West, and 14 South, 7 West, except as to the quantity that could be cultivated.

He would further testify that he is the R. G. Balderee mentioned in the bill of complaint who made application to purchase a quarter section of land in Township 20 South, 1 West, along with O. J. Lawrence, and that the general circumstances under which his application was made, settlement was made and maintained, and other circumstances relating thereto, are substantially the same as in the case of O. J. Lawrence.

Mr. Fenton: Counsel for defendants consent to this subject to the objection that the testimony, or part thereof, is incompetent, irrelevant and immaterial, and other objections made to the testimony of O. J. Lawrence; it not being intended to admit, of course, that the testimony

is true.

Mr. Townsend: And it is stipulated that the present offer shall have the same force and effect as if he had been called, sworn, and testified, and objections had been interposed as stated by counsel.

Mr. Fenton: It may be so understood.

STIPULATION.

Mr. Townsend: It is further stipulated that E. C. LAKE, if called and sworn as a witness in this case, would testify that he is one of the parties who made application to purchase land in Township 20 South, 1 West, and was made a cross-complainant in this present suit; that the testimony of Mr. Lake as to the character of the land in that township, and its susceptibility to cultivation and settlement, would be substantially the same as the testimony of O. J. Lawrence, excepting that the knowledge of Mr. Lake extends only to that one township, and not to the other lands referred to in the testimony of Mr. Lawrence; and Mr. Lake would further testify concerning his application to purchase, settlement, residence, improvements, and other details connected therewith, substantially the same as the witness O. J. Lawrence.

Mr. Fenton: And his cross-examination would develop substantially the same state of facts.

Mr. Townsend: Yes.

Mr. Fenton: It may be so stipulated, subject to the objections made to the previous testimony.

Mr. Townsend: Subject to the objections made as to the offer of the testimony of R. G. Balderee.

Whereupon C. W. MARIELS, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-one years old, and lives in the town of Gooch, a sawmill town in Linn county, Oregon. There is a sawmill and shacks there, and a postoffice, that is all. His father moved into Linn county in November, 1884 or 1885, he is not sure which, and his father lived on section 26, township 9 south, range 2 east. The house stands in the southeast quarter of the northwest quarter of section 26. His father took up a homestead there of practically one hundred and seventy-six acres. It was a fractional quarter section that ran more than one hundred and sixty acres, laid down on account of the donation land claim up against it. His father was the original entryman on this homestead. It was heavy timber land, brush and timber. His father has been dead since 1888, and the land belongs to his brother and himself. His father was a carpenter, he had been a farmer all of his life until he came to this country, that is, he had farmed, but when he came here in his early days he had learned the carpentry trade and went to carpentering, and took that land as a homestead, went on to that land there after he had been there something like three years. His father farmed that homestead, and when he died had about six acres under cultivation, and took his family there, about ninety days after he filed on it, died on the place. Witness lived in Salem part of the time while his father lived on the homestead. He had business there,

had cattle on the place all the time, and was backwards and forwards, and has lived there, he might say that had been his home all the time since then, right in there. His father raised hay, vegetables, fruit, and had stock there and made his living right on the place. His father had less than fifty dollars when he came here with his family, and had to go in debt the first winter for his living, after that he worked out in the neighborhood, and the like, and at the time he died was out of debt, and had made his living on the place. He is and ought to be acquainted with the farming and products of the soil in this general vicinity of Linn County, as he has lived there the greater portion of his life in that community. Referring to "Defendants' Exhibit 259," he is in what would be called Fox Valley, which is the postoffice there, and is about six miles east of Mehama. Mill City is marked in there but he is on the Linn County side, he is six miles east of Lyons, and is acquainted with all this country in there, and has been all through all of that country there, clear east to the summit. He has not been north any further than the divide between the Little North Fork of the Santiam that runs through Elkhorn and the Molalla, on the extreme eastern limits of the grant. He has been up in here quite a distance, probably six to ten miles from the Little North Fork, from Elkhorn, from here on up, in township 8 south, range 2 east. He has been east clear over the mountains, clear into the Three Sisters into Eastern Oregon. He is not acquainted with the lands in township 8 south, range 1 east, but has been in township 8 south, range 2 east, has been

through that district, and in township 9 south, ranges 1 and 3 east. He has been through township 8 south, range 3 east, but is not much acquainted through there. He is acquainted with township 10 south, ranges 1, 2 and 3 east, and has done some locating in and is acquainted with the lands in township 11 south, range 4 east. None of the lands in township 11 south, range 4 east, are included in the grant. He has been through that country all south of that, but as far as being acquainted is concerned, he is not. He has been pretty well through the mountains. The lands in township 8 south, range 2 east, would not run over 25 per cent that could be cultivated, that is in the mountains, and it is rocky country in there. The lands in township 9 south, ranges 1 and 2 east, will run 75 per cent, and township 9 south, range 3 east, will run from 40 to 60 per cent, along there, and township 10 south, ranges 1 and 2 east, will go probably 50 per cent, a little the rise of that, and township 10 south, range 3 east, will be up in the mountains again where it will probably go 40 to 50 per cent. He has done lots of hunting through that country, some locating and acting as guide, and has done some cruising. He hunted through that country and has been pretty thoroughly over it, has been all through it and has been from where he lives south pretty well all through the mountains, went through with pack horses and teams, through to California. If this land were divided into one hundred and sixty-acre tracts, these percentages stated would hold good as to each one hundred and sixty acres. He does not know of but one or two one hundred and sixty

acres in there but what a family could go on and make a living, meaning township 9 south, range 2 east, township 10 south, range 2 east, township 9 south, range 3 east, and so on. In township 8 south, range 2 east, there is some of that in Stack Creek and Horn Creek that they could not do it, it is very steep and rocky. The lands that could not be cultivated could be used for pasture land, they could run cattle, sheep, goats—very little sheep in their country there—cattle and goats, on this pasture land. They raise wheat and oats and hay of all kinds—clover and some timothy—and are introducing alfalfa, in the vicinity of these lands, but they have not made a success of that yet, there are one or two good patches, outside of that there is not. They raise all kinds of vegetables, and all kinds of fruit, outside of peaches. Lands similar to the railroad lands are settled. By settled, he means people have taken up homesteads and live on them, make a living on the land in following agricultural pursuits, farming. His father's place is now logged off, the timber was sold and the title to the land retained. They got $2750 for eighty acres of timber, the other timber is not sold. He applied to purchase lands from the railroad company in section 35, township 9 south, range 2 east, near his father's homestead, it joined his place. He desired that land to make a home and it is good land, part of it has timber on, heavy timber, but there is a part of it that is swamp, and a kind of meadow on it, a vine maple swamp. He and his three brothers tried to buy all the section that was left there, that is four hundred and eighty acres off the section, and there was probably

in the whole thing about sixty acres of this swamp, but in reality the meadow and the swamp on the part that he wanted was something like eighteen to twenty acres. The swamp referred to in the low ground would have to be drained. That is what they call a Nine Bark swamp, or a beaverdam, and it is covered with brush, and water stands on it in the winter time, and till late in the summer, and then around the edges there is a kind of fern glade, and this swamp is lower ground—and the higher up it gets, probably this glade is ten or twelve feet above the swamp, and it runs out into vine maple swamp then, with very little timber on it. There is probably twenty acres which has vine maple, and the rest has heavy timber. The whole thing could be rendered suitable for cultivation if the timber was off. There would be on that one hundred and sixty acres probably not more than twelve to fifteen acres on the hillside that one could not plow and the rest of it could all be plowed. He made his application to purchase this land the first time along about 1896, but he is not sure about the time. The company replied that they asked something like fifteen dollars an acre for it. The last time he applied, was in 1908, and the company answered that it was not for sale at all.

Q. Mr. Mariels, what has been the effect, in your opinion, of the Railroad Company's failure to fulfill the conditions of this grant to sell the land to actual settlers in tracts of 160 acres, at $2.50 an acre? What is its effect in that community that you lived in there?

A. It has kept settlers out of there, kept people out

of the country. You take it there now, Mr. Henry Bodiker, he had a homestead on top of the mountain there, and just the way the country laid, there was a railroad section on each side of it, that was good land, and he couldn't, nobody could get in there next to him. He had no school, he had to send his children, well, between 3½ and 4 miles to school.

Whereupon, upon cross examination, witness testified, that his father took this homestead in 1884 or 1885, in section 26, township 9 south, range 2 east, on the Santiam river. The Potter donation land claim joined it. He does not remember whether that donation claim was a half section or a section. There were four hundred and eighty acres in the Potter place originally, but there was part of it Mrs. Potter's donation claim, and he does not know whether it was three hundred and twenty acres or four hundred and eighty. That donation was settled a great many years ago, in the fifties. His father's homestead was all timber land, he had cleared before his death five or six acres right around the house. It was not right on the Santiam, but up on the first bench from the Santiam, a little over a quarter of a mile from the river. The Santiam River bottom overflows at high water. It is not covered with cottonwood and stuff like that, but is all gravel and rock, and is all river bar there, that North Santiam on up. There is no open land on the river above his father's place, nor this side of it that is any good. It is the first bench above the river that has any farming land at all to speak of. On this Potter donation land claim, he thinks there is something like two hundred acres

of cultivated land now, that is, of the old place. He could not tell how much of that was prairie in the beginning. He knows that they have cleared up—he would think there have been about sixty acres of it, seventy acres, cleared since he went there. They slashed and cut the logs, girdled the trees and killed them, and then felled them after a few years, and logged it up and burned it. They have taken the stumps all out now, they burned the stumps out. He did not say that his father had his place logged. His father never did have his place logged. The boys sold the timber off the place in the last four years to Fred Gooch and it was sawed in a sawmill there. The sawmill is right on their place and has been there four years last March. They sold in the first sale, eighty acres of timber to Gooch. He couldn't tell how many million feet it amounted to, he did not scale it, they sold it, for a lump sum of twenty-seven hundred and fifty dollars. They estimated the timber at about 75 cents a thousand, which was about the market price at that time. It is now worth a dollar to a dollar and a quarter to a dollar and a half. This clearing that he had done on his father's homestead, all together, on both places, was probably something like twenty acres, that is, there is some of it that has not been plowed yet, that he will plow up this winter, about twenty acres. It is not all on his father's homestead, he bought a place there, a part of this old Potter donation land claim, two years ago at $25 per acre, the east part of it, the timber part of it, ninety-seven acres of it, and probably eight or ten acres of this cleared land that he speaks of is on the Potter do-

nation land claim and the balance of the twenty acres is on the homestead. The two boys now own the homestead and, in addition to that, he has a part of the Potter place, and one of his brothers bought part of the Harm place which is east of that. His father's homestead, owned by him and his brother, is not for sale, and he could not say what would be its fair market value if it was for sale, he could place a value on this piece of land of his which lays right on the west side of this, referring to the Potter land, he is holding that ninety-seven acres at $5000.00, and he thinks that is plenty high enough, it is probably worth forty or forty-five dollars an acre. There was four hundred and eighty acres of this railroad land that he and his brothers, the three of them applied to purchase, each a quarter section, it was timber and brush. It had some good saw timber on it, it had something like three million feet to each quarter section. It was a mile and a quarter to two miles from the Santiam River, and could be logged. They log within two or three miles of the Santiam River, using cables and a donkey engine. The stumpage would be worth a dollar probably. The company asked fifteen dollars an acre for that land in 1896, and he applied for it last in 1908.

Q. Did you make an application under this $2.50 an acre statute?

A. No, sir. Yes, I made application there, and they answered me back that it was absolutely not for sale.

Q. Did you sign one of these written blanks that

these timber locators and brokers had been circulating around?

A. No, sir.

Q. You just wrote a letter?

A. I wrote a letter, and made out a blank, had a blank made out by a Notary Public.

Q. But did you offer the $2.50 an acre?

A. Yes, sir.

Q. And you claimed to be an actual settler, did you?

A. Yes, sir.

Q. But you never went on the land to settle on it?

A. How is that?

Q. You never went on the railroad land, though, to settle on it, did you?

A. Well, never built no house. I went up there and made some improvements.

Q. What did you do?

A. Done some slashing, and put some fence onto it, and used it for pasture until later on, until I got my notice that it absolutely was not for sale, and so I went and tore the fence down.

Q. Well, your intention was to make actual settlement in that way?

My intention was to put up a house and move my family onto it. His application was made some time

in 1908, and he went to work and fenced part of it, and did a little slashing, and where he started in to slash there, he aimed to put up a house. He did not do much slashing, probably something like a half acre. It was not in the big timber. That was in near this fern glade, this swamp, probably three-quarters of a mile, on an air line, from the house on his homestead, but by wagon road it was two and a half miles. At that time his family consisted of his wife and three children. He was living in Salem at that time, and in business at Salem, and he made this application out at Salem. R. R. Ryan was the notary public. He does not think Ryan was in the business of taking these applications. He does not know of any applications that Ryan made out. He does not know where his two brothers made their applications, but they applied for the other two quarters. All three of these timbered quarters would carry, in his judgment, about three million feet to a quarter. He does not know that his brothers made their applications in 1908. They made it from 1906 to 1908, along there somewhere, in the same way, at two dollars and fifty cents an acre. They were living at Fox Valley, what is Gooch now, and about a half a mile from these places, from a half to a mile of these places. There was some Government land away back in there that was not taken. They did not take that Government land because this railroad land was better land and closer up to settlements. This Government land had good timber on it, it had three million feet on it and a whole lot more. It is not still Government land—he could not tell who had taken it. There

has been some homestead land taken there, a whole lot under the Timber and Stone Act. While he was living in Salem, his business was handling horses. He was there about six years, off and on. While his father lived on this homestead, he followed his trade and worked out when he could, at carpentry work. He was fourteen or fifteen years old when his father went on the homestead in 1884. Witness worked out away from home, worked down on the Albany prairie, on a ranch down there. The rest of the children are younger than he, he is the oldest one of the family. His father did not get ahead by his help, he was not enabled to support himself and his family in that way. He is sorry to say that he didn't help his father much before his death, he didn't help the family enough. His father worked out when he could, he was a carpenter, but at that time there was no carpenter work to be done up in that part of the country at all, he did work out a good deal of the time, and only cleared about six acres, but that was heavy timber that he cleared. His father kept some stock, which ranged all over the country there, south. He does not know how many cattle his father kept, probably he had twenty or thirty head, somewhere along there, he would sell a few cattle every year; he did not sell any vegetables or anything of that kind, until the railroad went in there in 1887, when he sold what vegetables and potatoes and the like he had then. It operates three trains a day from Mill City up, and runs a logging train from Mill City up, and freight, besides passengers, regularly. Gooch is a little sawmill town, but he does

not know how many men work at this sawmill, but would judge something like thirty or thirty-five, that is in the sawmill and in the woods. They get their logs from the mountains around there. He has cruised some of this railroad land, he never cruised any of the railroad land excepting for himself. He cruised in section 25, township 9-2, and section 3, township 10, range 2, and he cruised that for himself because it was a good piece of land and his idea was to try to buy it, and he afterwards did try to buy it. This is not the land that he has referred to. He tried to buy three different pieces. As fast as they would answer him back on one, he would write again. In section 3, township 10 south, range 2 east, that will go something like 4,000,000 to 4,500,000 feet to a quarter section. He cruised that in the winter of 1908 or 1909. He did not apply to buy a quarter section of that under this Act. He wrote to the Company for prices on it, and told them he wanted to make application to buy this quarter in section 3, but did not state what price he wanted to buy it at. He got a reply that it was not for sale. He wanted to go out there and settle on this piece of timber land. At that time he hadn't bought this Potter place and he was looking for a location, and wanted to take his family out to that. If a man would be right careful, he would get big timber enough on this quarter in section 25 to fence it, that would be all. There was some of that quarter that was good farming land. The reason that he did not take that quarter that had no timber on it for a home was they refused his application. He has applied to

buy three different quarter sections of this railroad land, they wrote to buy and the Company informed them that there wasn't any of it for sale, and they would write for another piece.

Q. You wanted to make a home, and be an actual settler on each one of these three?

A. Well, I suppose when they turned me down on where this timber was that I could buy this where there was no timber, so I wrote to them.

Q. Now, you intended, though, to settle, if they would let you, on each of the three?

A. Yes, sir. No, either piece that I bought I aimed to settle, yes.

Q. Well, but you first applied for two timber quarters, didn't you.

A. How is that?

Q. You first applied for two timber quarters?

A. I first applied for a piece in 35. They turned me down on that, and then I applied for a piece in 3, and they turned me down on that, and then I wrote in reference to 25.

Q. And they turned you down on that?

A. Yes, sir. They said they had no land in that district for sale at all.

Q. Yes, I understand that. You have stated that two or three times.

A. Yes.

Q. But each of the first two quarters was good for timber, one had about 3,000,000 feet on it, and the other had about 4,000,000 feet?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

Q. And when you couldn't get the timber quarters, then you tried them on a quarter that didn't have any timber on?

A. Yes, sir.

Q. You intended to move onto the first one they sold you?

A. Yes.

Q. And make an actual home and a settlement?

A. Trying to buy a piece of land, yes.

Q. Now, why didn't you take a homestead? You had a homestead right, hadn't you?

A. Yes, sir.

Q. Well, weren't you, after the time you became 21, weren't there a lot of good homesteads up in that country?

A. Yes, sir.

Q. Why didn't you take a homestead, and get some of this good timber?

A. I have got a homestead.

Q. Where is your homestead?

A. It is in—that is I haven't got a homestead. I took one in 11-4.

Q. What section, part of section?

A. Well, now, I couldn't tell you just exactly what section it is in.

Q. When did you file on that?

A. Never filed.

Q. You selected it?

A. I went in there before it was surveyed, and just took a squatter's claim on it.

Q. Have you ever applied? It has been surveyed since?

A. It has been surveyed, yes, sir.

Q. How long ago?

A. Why, I don't remember just when that survey was accepted.

Q. Is your time up in which to apply?

A. Yes, sir.

Q. You haven't applied, though?

A. Yes, I applied.

Q. Where did you apply? At the local Land Office?

A. Yes, sir.

Q. At Portland?

A. Here at Portland.

Q. When did you make the application?

A. Either four or five years ago.

Q. And have you made improvements on it?

A. How is that?

Q. Have you made any improvements on it?

A. Built a house onto it, yes, sir.

Q. Have you lived on it?

A. Well, no, I didn't live on it.

Q. You just did about what others do when they take a homestead?

A. No, sir. They notified me that it was not open for settlement, that the Railroad Company had placed scrip onto it, and unfortunately I had a family, and my wife was in no shape to stay there that winter, and I had to move out, go back.

Q. You did live on the land?

A. Yes, sir.

Q. How long did you actually live on the land?

A. I was not on the land—I didn't have my family on the land very long. I was on the land very near all summer.

Q. Just tell us how long you had your family on the land?

A. Well, I don't know as I could.

Q. Was it one night or two nights?

A. Oh, yes, they was out longer than that. There

was one child that I never took in, because he was a baby, and my wife she was in there with the other children, and she was in there I don't know how long.

Q. A week?

A. She was in there twice.

Q. A week or ten days?

A. There was one time, yes.

Q. And did you have a house to live in, or did you live in a tent?

A. I had a house to live in.

Q. You built just a little shack?

A. I built a cedar house—14x16.

Q. And you took a few things in to cook with, and a few little bedding?

A. I took some bedding in, yes, sir.

Q. And then your wife was there about a week, and some of the children, and then after that she came back again for a little while? Is that right?

A. Yes, sir.

Q. And then you finally gave it up?

A. No, sir.

Q. You still claim it?

A. I gave it up because I had to that winter, and moved out.

Q. What winter was this?

A. It was 1907, I think it was.

Q. Was your wife up there in the winter or in the summer?

A. She was there in the fall.

Q. What month?

A. She was there both in July and August.

Q. Well, that is practically summer in this country, isn't it, July and August?

A. Yes, sir.

Q. Well, that is about the time when we have our vacations in the mountains?

A. Yes, sir.

Q. Sort of recreation?

A. Yes, sir.

Q. Do any fishing out there—hunting?

A. How is that?

Q. Did you do any fishing or hunting out there during that time?

A. I hardly ever fished any at all.

Q. I know, you hardly ever, but did you that time?

A. I don't think—I don't think I had a fish pole in my hand for ten or twelve years to fish, until this summer, sir.

Q. You didn't fish any out there that time?

A. No, sir.

Q. Did you hunt any?

A. I don't remember whether I did or not. I generally do, though, when I am around the woods.

Q. Did you see my brother H. L. Fenton out there hunting elk and deer in that country?

A. No, sir.

Q. You know him, don't you—lives at Dallas?

A. I have heard of him.

Q. Well, you have heard of him, he is a hunter?

A. Yes, sir.

Q. Goes into that country and spends his summer hunting sometimes?

A. Sometimes, yes, sir.

Q. Now, then, you get elk out there sometimes, don't you?

A. No, sir.

Q. They are all gone?

A. No, there is elk in there.

Q. Well, that is what I thought, there is elk.

A. That is, not in that part of the country. There is elk in the country out there in the Cascade Mountains, yes, sir.

Q. Now, this homestead, that was scripped by the Northern Pacific, I suppose?

A. Yes, sir.

Q. Did it have any timber on it?

A. Yes, sir.

Q. How much did it have on it, in your judgment?

A. Probably seven million and a half, or eight million.

Q. Seven or eight million would be a good claim, wouldn't it?

A. Pretty fair claim, yes, sir. There is some claims, though, that has got more timber than that on.

Q. Did your brothers take homesteads out there, too?

A. Well, I don't think they did, no. They might have, but I don't think that they did.

Q. Why didn't you take it under the Timber and Stone Act?

A. How is that?

Q. Why didn't you take some of this timber under the Timber and Stone Act, and get a good quarter section of timber?

A. Unfortunately you cannot do that on unsurveyed land.

Q. Wasn't there some surveyed land out there you could take under the Timber and Stone Act, that would have had good timber on it?

A. Yes, sir. Not in that township, no, sir, not in that township.

Q. Well, I mean in the same township that you are farming.

A. Yes, sir.

Q. A good deal of that land was taken that way, wasn't there?

A. There was some land taken that way, yes, sir.

Q. And some of it taken by homesteads?

A. Yes, sir.

Q. Taken a good deal like you tried to take this quarter section homestead—the same way?

A. No, sir. The homesteads that have been proved up in there, that is, outside of some three or four, has all moved their families onto them, and proved up onto them proper.

Q. But when they proved up on one of those finest timber quarters, they sold out to timber people, didn't they?

A. Why, they was forced to, yes, sir.

Q. You mean forced to, because they could get a good price for the timber and do better by selling it?

A. No, sir. No. They were pretty near forced to on account of the railroad Company owned the odd sections around them, and they couldn't get settlers in there to help them develop the country, and have schools for the children, and the like of that.

Q. They usually sold out about as soon as they proved up, didn't they?

A. No, I know several homesteads that is still owned by the parties that homesteaded.

Q. Yes, I know there are a few?

A. Yes, sir.

Q. But those that got good timber, as soon as they got their title, why, they got a good offer and they sold out a couple of years ago, didn't they, most of them?

A. Well, there is part of them sold out, yes. There is part of them sold out.

Q. What did they get for those timber quarters, generally, that they sold?

A. Well, I couldn't tell you. The price has varied a good deal.

Whereupon witness testified, that he could not tell that he knew of very many homesteads outside of this Bodiker place which was sold, who got something like ten thousand dollars for his place. He had two hundred and eighty odd acres in there. Bodiker bought some railroad land in there, and sold to Robert Shaw for the Curtis Lumber Company. Shaw was manager of the Curtis Lumber Company and has put forty acres of orchard on the land now. He could not tell whether they bought that land for the timber, but Shaw was superintendent or manager of the Curtis Lumber Company, and he thinks lives at Albany, but he don't know. The Curtis Lumber Company does business up there along at Detroit and along the river, and owns thousands of acres of timber lands in that country.

Whereupon, upon redirect examination, witness testified, that this homestead or settlement that he had on the unsurveyed land was beyond the eastern limits of the grant in range 4, twenty-five miles from the railroad. The railroad runs through sections 25 and 35, and is about three miles from section 3, township 10 south, range 2 east. In township 9 south, range 2 east, the railroad runs through the corner of section 35, and also the corner of section 25, and this settlement that he had in 4 east was about twenty or twenty-five miles from a school house. This railroad land that he tried to buy in sections 25 and 35, in township 9 south, range 2 east, is about a half a mile from a school. The applications that he made to purchase land from the railroad company were in 1896, along there, and it was quoted to him at something like fifteen dollars an acre—the exact price he does not remember. He made three applications for railroad land. He did not apply for the second one before he had received an answer to the first. After he got his answer, he would write about another piece. The company never said in the letters that there was none of the land for sale when it answered his letters, they said that the piece of land was not for sale, and so he would write about another piece, and in this way he happened to write about the three pieces. One of these tracts contained no merchantable timber, in section 25, on the Linn county side. On the Marion county side, there is a little scrub timber on it, but on the Linn county side there is comparatively no timber at all. There is some small fir, that is, brush four or five inches through, and very thick

hazel brush and dogwood, such as that. Probably sixty or seventy acres of that quarter could be put under cultivation. Bodiker owned some railroad land, bought some railroad land there, he could not say how long he lived up there. Bodiker was in there when they went to the country and he could not state how long he lived there. Bodiker has sold and moved out a couple of years ago, and bought a place down in the valley, on the railroad. The Bodiker place was an old settled homestead, homesteaded years ago, somewhere along in 1882 or 1883, he is not positive about that, and it was sold about two years ago. Shaw is putting out a forty acre orchard there, with apples, and he understands that he is putting—he hasn't it set out yet, but witness understands he is going to put out some pears, and he was talking with the man on the place a month or six weeks ago and the man said they hadn't set out anything only apples. Witness doesn't know about their pears, they have some fruit on it. Bodiker had quite an orchard there when he sold the place. That homestead was timber land. It was right up on the mountain, the highest point there is around there within quite a little ways of him, and right in the heavy timber. Bodiker went in in the heavy timber and took that up, and burned up the timber that he cut from his place in clearing.

Whereupon, upon recross examination, witness testified, that Bodiker got about ten thousand dollars for his land. He could not tell how many million feet of timber was left on it. Part of it was heavy timber, though. Bodiker burned the timber off of the land he cleared up

and cleared something like sixty acres, he does not know just how much, that was from 1882, down to the time he sold a couple of years ago.

Whereupon ANDREW ANDERSON, called as a witness on behalf of complainant, being duly sworn, testified, that he is sixty-one years old and resides at Scappoose, Columbia County, Oregon, and has lived in that county twenty-eight years. Prior to the time he went to Columbia county, he was in Baker county about two months. He was born in Sweden, but is a naturalized citizen of this country. The first year after moving into Columbia county, he worked around farms and one thing and another, but he was not there two months before he started to get a homestead. He made his filings in February, 1885. His homestead is located about six miles from Scappoose by the road. It was timber land when he took it up. He has cut the timber down, burned it up and cleared the land, and has now about ten acres under plow, about forty or fifty acres burned over and seeded down for pasture. He lives on his homestead and has made it his home since he first took it up. He is a bachelor. He raises most anything on his homestead there that can be raised around the country, grain, wheat, rye, oats, barley, peas, vegetables, some apples, some pears, some plums and prunes. He has done nothing else besides farming since he took up that land. Referring to "Defendants' Exhibit 259," there is some railroad land in sections 9 and 5, township 3 north, range 2 west, and some in section 19, township 3 north, range 2 west, and there is section 1 in township 3 north, range

3 west, with which he is acquainted. He is somewhat acquainted with those townships, but not so that he could describe them all. In township 3 north, range 3 west, he is acquainted with nothing but sections 1, 2 and 12. After the timber is taken off and the land is cleared, in his opinion 50 per cent of that land could be put under the plow, take the whole country,—some sections more and some few less. He is acquainted with lands of the railroad company generally in township 3 north, range 2 west. In section 5, for instance, there was a man who bought some land there, and he helped him to do some work on it, so he knows the land, and in section 5 he has been all over that several times, in section 5, township 3 north, range 2 west. In section 9, he knows there is one hundred and sixty acres that was taken before the railroad company got the land, which he is acquainted with and also the land down in there. He does not include in his estimate the land that the railroad company did not get, but take it all over in township 3 north, range 2 west, he would think there would be 50 per cent of the unsold lands of the railroad company, in his opinion, that could be rendered suitable for cultivation. He is not acquainted with any of the other lands in this railroad area in Columbia county. There are similar lands under cultivation in the community of these railroad lands. The lands of the railroad company with which he is acquainted in township 3 north, range 3 west, have no timber, neither section 9 nor section 5 in that township has any timber to amount to anything, they have only brush. In township 3 north, range 2 west, that is section

1, the north half of that is heavily timbered, and the south half there has very little timber. There is no timber on the railroad land in the other townships that he has mentioned. He is acquainted in township 3 north, range 3 west, sections 1, 2 and 12. Section 1 ought to be about six miles from Scappoose, he thinks. He applied to purchase some land of the railroad company—he applied, but gave it up. It was in December of 1907. The land that he applied for was in section 1, township 3 north, range 3 west, the southeast quarter. Prior to filing his application, he had never done a thing to the land, only went there once and put up a notice, and was over the country. The company replied to his application to purchase land that it was not for sale.

Whereupon, upon cross examination, witness testified, that E. E. Quick of St. Helens prepared the papers for him when he applied for the land, using a printed form. He applied for it under the two and a half an acre clause as an actual settler. He put a notice on the property before he had Quick do the business for him, that is, he posted a notice on the quarter section. He was not advised to do that by Quick. He had done that before he took any advice from Quick. This two dollars and a half an acre business was spoken of all over the country, that one could apply for a quarter section and the company would be forced to sell to the person, providing the land went back to the Government. That became generally known all over the country about the summer of 1907, he thinks, and there was quite a rush to get these timber claims under that. Two men got a

section, one came after him and took it, one got his and put a notice on top of his. On this quarter section that he took, there was about a million and a half feet of timber. He had a homestead of one hundred and sitxy acres and wanted another homestead, and if it was going at two dollars and a half an acre he wanted to get another place to settle on. He never did a thing on this hundred and sixty acres out there. While he was proving up and living on his homestead down near Scappoose, about six miles west of Scappoose on the Scappoose creek, he worked out around the first three years and did that to get something to live on, and after that he had a cow or two and a little garden and made his living on the place. He sold some timber off of the place in 1905 to W. O. Jeff, since incorporated in the name of the North Coast Lumber Company, in Boston. It was fir and cedar, he sold a little over two million feet. There was about 150,000 feet of cedar. He sold his cedar too quick, he got only fifty cents for the fir, and seventy-five cents for the cedar, and if he had held it a year he could have just doubled that amount, he could have got a dollar for the fir if he had held it a year, and a dollar and a half for the cedar. They logged it off. He run a fire over that and seeded it down to grass, and now keeps stock there. He has only three cows on there. This homestead is not all fenced, it doesn't need to be fenced. He has fenced what he needs for plowing purposes, about ten acres, and makes his living by stock and by farming. He sells some forty, fifty or sixty sacks of potatoes a year raised on this ten acres, and then he runs his cream down to the

creamery and gets about twenty dollars a month for cream from his cows. His stock pastures right on his ranch. His stock has not left the ranch for the last two years. They cannot get up into the deep woods, and below he has a fence. It is heavily timbered, and the cattle do not know that he has no fence. He is acquainted with only one section, with section 1, in township 3 north, range 3 west. The south half, in his estimation, has about 300,000 feet of saw timber on it, and the north half ten or twelve million feet on it, that is a pretty thick heavy set of timber. Take the whole country through there, he thinks it will average about four million feet to the quarter section, that is in township 3 north, range 3 west. He knows sections 1 and 7, he had forgotten 7, in township 3 north, range 3 west, which is all of the railroad land that he knows in that township. Section 7 will run about fourteen or fifteen million feet to the whole section, about three and a half million to the quarter section, in his estimation. He does not know any other section in township 3 north, range 3 west. He knows sections 5, 7 and 9 in township 3 north, range 2 west. On sections 5 and 9 there is no timber at all, and section 7 is as he has already stated. Sections 5 and 9 have not been logged off, but have been burned off, kept burning off until everything was gone, only some brush remains. It was a clean country twenty-five years ago, and now it is all overgrown with young fir. It is a second growth fir, on this old burn, and runs from six inches, he would think, and there is some that would be a foot and larger, and one hundred feet high or more,

and they have grown up in twenty-five years. He thinks that this second growth fir in that country there would reach one hundred and fifty feet high, and some of it eighteen to twenty inches at the butt, in fifty years, judging from the way it has grown. Sections 5, 9 and 7 in township 3 north, range 2 west, are all that he can describe. Section 9 is of the same kind as in section 5—burned off. There is second growth fir growing on that, thick enough so one can hardly get through where it is left alone. As they grow larger, they grow slower. In twenty-five years more, it would not have three million feet on it, but ultimately it might have three or four million feet on it. Take the whole country through after the timber is removed and the stumps taken out, about 50 per cent of it could be farmed. Very little of it is rough or rocky. Some of the land would run less than 50 per cent, and some would run more. He thinks it would average about 50 per cent that could be farmed after the timber is removed and stumps taken out, that could be plowed. He is five miles from the railroad in a straight line. That railroad was there when he came in 1884, but no train was running on it. That was the Northern Pacific at that time, running between Puget Sound and Portland, when they used to cross down at Goble, across the Columbia River, and now it is the Astoria and Columbia River Railroad Company, or the Spokane, Portland & Seattle, and he thinks there are about three trains each way, passenger trains, and he does not know how many freights. He thinks that country around Scappoose has been settled for fifty years.

These railroad lands are mostly back in the foothills and in the mountains. That part down next to St. Helens and Scappoose and through there has been taken up under the donation law, excepting here and there a homestead. There is a road from Hillsboro through the mountains over into Columbia county, by way of Scappoose, out to Washington county. That road goes from Scappoose and over the mountains, but that was vacated years ago. There are two roads in there now. One goes to South Scappoose Creek, and crosses over the mountains to Washington county, and the other starts from Rock Point and goes over to Washington county, but all get finally over to Hillsboro.

Whereupon, upon redirect examination, witness testified, that these roads he referred to are county roads, wagon roads, not logging roads.

Whereupon T. W. GRANT, a witness called on behalf of complainant, being duly sworn, testified, that he is fifty-seven years old, and resides in section 17, township 3 north, range 2 west, in Columbia County, Oregon, and has resided in that county about thirty-seven years. A good portion of the time while he has been a resident of that county, the first part of the time he was a day laborer, hauling cordwood. He has followed farming and timber, farming and dairying at the present time, in a small way. His land which he is now farming is near the Washington county line, in section 17, township 3 north, range 2 west, and he has eighty acres of railroad land. In 1880, he purchased one hundred and twenty acres from the railroad company in

section 17, on contract, and his mother purchased one hundred and twenty acres adjoining him in the same way, at his suggestion. In 1885 he sold his contract and went to southern Oregon. Returning in the Fall, he purchased from his mother eighty acres, under arrangements made with her, and was to pay her what she had paid on this land, return the money she had already paid out, and he was to continue the annual payments, which he did, but there were no papers made out, no legal transfer made until after she obtained her deed from the company. As soon as she obtained her deed from the company, she deeded eighty acres to him that he had paid for. He grows on that place principally, hay, because he is keeping cows, but he grows almost all kinds of vegetables for family use, and corn and kale. He is a married man, has a wife and four children. He owns only this eighty acres, and he is making his living there now from that land and his cows. He keeps five and six cows, and is adding to them each year, and expects to enlarge it as he enlarges his dairying. He has a separator, and his cream is delivered to the skimming station there and shipped to Portland. The dairying business is carried on quite extensively in that community in which he lives, and that community is considered a dairy country. They have been engaged in the dairying business in that country a few years. Four or five years ago he had about four cows. He followed that about two or three years and did not have cows enough, he thought, to make it pay, and sold them out, and then started in again about a year ago, purchased five head, kept five and six head of

cows. This eighty acres he obtained from the railroad company, or which his mother contracted for, was brush and timber. There was some timber on it, but they called it brush land. He is really not much acquainted with any of the railroad lands excepting in section 17. He is pretty well acquainted with that, all over south of there. He has been over the land in a general way, but he knows nothing about the lines, just the country in general, in a general way, used to hunt up there considerable. That is in township 3 north, range 2 west. He has a general knowledge of the country around his home place, and has been over, in a general way, perhaps three or four miles south of him. He was only over that occasionally, perhaps once or twice a year, carrying his gun and hunting deer. He noticed the lay of the land and the character of the soil and the growths that were on the land on these trips, and he would judge that there is about 50 per cent of that land with which he is acquainted that would do for what they call tillable land, would be level enough to be tillable land, and then there is probably 45 per cent of it that would do for pasture if the brush were slashed off and burned, which is in addition to the 50 per cent that could be tilled. He would think there was at least five per cent that would be no good for anything. There are similar lands which are cultivated and there are farms in his vicinity, and there are some farms there within that radius, of the same general character of lands. The lands vary somewhat, some of them, perhaps, might be poorer, but some just as good or perhaps a little better than his land. He would think that his would be

about the average. Some lands would perhaps be a little more level than what he has, and then, perhaps, there are others again that would be a little rougher than his. These lands have timber in spots, streaks, and there are places that have nothing but brush, and there are other places again that are mostly burns—with very little brush on them. He is referring to the lands about him there in this area.

Whereupon, upon cross examination, witness testified, that his mother and he bought this railroad land about 1880 or 1881, he is not positive which. He had one hundred and twenty acres and she had one hundred and twenty acres, and they paid two dollars and a half an acre for the land, in ten installments. At the time they bought this land, none of it was cleared. He would judge that he had cleared about fourteen or fifteen acres of this eighty acres, and the balance he uses for stock to range over mostly, some of it, three or four acres is slashed and seeded to grass. There was some saw timber on his eighty, which he sold a few days ago for a lump sum. He believes he got two hundred dollars for his saw timber. It was sold about 1896. His mother kept forty acres of this railroad land until a few years ago, when she gave it to his sister and brother. There was timber on the north part of it, some of it was good saw timber. He could not say how much saw timber they had, he is not used to estimating the timber. This eighty which he owns is in section 17, township 8 north, range 2 west. He could not say only in a general way what railroad land he is acquainted with besides this section 17.

He does not know anything about the lines or the township lines, and could not say anything about the numbers. That which he has been over is in Washington county, three or four miles from his place. Some of that country that he has been over there has no timber at all. Some of it, after one gets pretty well south, has some timber on it. He is about four and a half miles from the railroad. His station is Scappoose. He is west of Scappoose, and lives about a half a mile from Mr. Anderson. "Q. Then all the railroad land that you really know anything about then is in this section 17? A. Yes, sir, that is all that I could speak anything about there." He would judge that 50 per cent of his land would be tillable, and of the balance 45 per cent would be pasturage if it was cleared off, and 5 per cent of no value, that would be a fair estimate and that would apply to the whole section 17. He couldn't hardly say positively if there is any railroad land in section 17 that is unsold. There is a great deal of that land in that vicinity which is owned by non-residents. These non-residents are not all timber people. A great deal of their land is unoccupied. Of course, there is some of this section settled up besides what he has—settlers living there. He never took a homestead. He knows the east half of the southwest quarter of section 17, township 3 north, range 2 west, and a part of that would make good pasturage; it is somewhat rough, no timber on it, it is second growth and it is not large enough for anything, it is sort of a scrubby growth. The northeast quarter of the southeast quarter, containing forty acres, is very good land, there is no tim-

ber on it, except second growth—most all second growth. It was burned over several years ago and a new growth has come up again. He would think this second growth would average about eight or ten inches. He delivers his cream to Scappoose, to the skimming station there, this creamery they ship to has an agent, receiving agent there at the old creamery plant, they take the milk there and the agent does the shipping, they have nothing to do with the shipping. That is what he means by that being a dairy country. They used to have a creamery located there, they sell now to the Oregon Cream Company in Portland. He could not say how much cream is shipped from Scappoose Station. There is a good deal shipped, and then there is a good deal shipped from Scappoose itself, where they are shipping is called Johnson's Crossing, and is perhaps a mile and a half or two miles south of Scappoose on this North Bank railroad, now the Spokane, Portland & Seattle. That railroad has been there ever since 1883. The country around Scappoose is comparatively level, and in five or six miles one starts in to get to the hill land, bench land they call it, and then a little further back into the mountains. The Columbia River is eight or ten miles east of Scappoose. They have the Willamette Slough there where they are—they live on the Willamette Slough. There is a good deal of stock on the Willamette Slough. Between the railroad and the Columbia River, there is a great deal of cattle and a good deal of cream comes from that section.

Whereupon, upon redirect examination, witness testified, that he does not mean exactly that he is not ac-

quainted with railroad land other than in this section 17, but he does not know exactly what the other is. He is acquainted with other sections. He is well acquainted with land for about three or four miles around where he lives, and he has testified concerning his opinion as to that territory, as to the percentage that could be cultivated. Some of the other may be railroad land, but he does not know anything about the number, or the lines.

Whereupon, D. McLAFFERTY, called as a witness on behalf of complainant being duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Townsend:

Q. Mr. McLafferty, you are one of the cross complainants in this case, are you not?

A. Yes, sir.

Q. You are one of the persons who instituted suit against the Oregon and California Railroad Company and others, for the purpose of compelling them to sell you 160 acres of land which you had applied to purchase?

A. Yes, sir.

Q. And Mr. Lafferty was your attorney?

A. Yes, sir.

Q. And is your attorney?

A. Yes.

Q. How long have you lived in Oregon, Mr. McLafferty?

A. Four years and a half.

Q. And where did you live prior to that?

A. Aberdeen, Washington.

Q. How long did you live there?

A. Nearly 20 years.

Q. What business have you been engaged in, Mr. McLafferty?

A. Wall paper hanging business; wall paper hanger and painter.

Q. When you moved over into Oregon, to what point did you first come?

A. I went out on this Section 25, 4 North, 3 West.

Q. What part of the section?

A. Northeast quarter.

Q. And when was it that you went there?

A. In the spring of 1908.

Q. The spring of 1908?

A. Yes, sir.

Q. Since that time have you been over that township to any extent?

A. Somewhat.

Q. How about any of the adjoining townships?

A. Only to a slight extent in the township south.

Q. That would be 3 North, 3 West?

A. 3 North, 3 West.

Q. Now do you know where the railroad lands are situated in a general way in this township 4 North 3 West, and which are involved in this case?

A. I only know, not definitely, I only know of some few sections where other settlers have gone.

Q. You know of the tract which you yourself have settled upon, of course?

A. Yes, sir.

Q. And some other similarly situated, I understand?

A. Yes.

Q. Speaking in a general way, now, Mr. McLafferty, what is the character of the soil in that township?

A. The soil is what is known as a shot soil, deep, rich, mellow soil.

Q. Have you seen any demonstration as to what the soil will produce?

A. Yes, sir.

Q. In that same township?

A. Yes, sir.

Q. On the railroad lands or lands adjoining, or both?

A. Both.

Q. To what extent are the even numbered sections settled in that township?

A. They are all settled, as far as I know.

Q. How about the even numbered sections, adjoining this Section 25 that you settled upon?

A. All settled.

Q. To what extent have they made clearings of the even numbered sections, and removed the stumps and reduced the lands to cultivation?

A. So far as I have been over these even numbered sections, the settlers have made their homes and cleared, oh, from five to twenty acres, perhaps.

Q. What kind of crops are they growing on the cleared land?

A. They are not living there now. They have sold to the Chapman Timber Company, but there were orchards, apples, pears, plums on two of them that I know of.

Q. Now, there is pretty heavy timber in that township, isn't there?

A. Somewhat, yes, sir.

Q. That can be said generally of the entire township?

A. Yes.

Q. The Chapman Lumber Company, is that the same concern that Mr. Quick referred to in his testimony the other day?

A. I don't know that I heard Mr. Quick.

Q. Oh, you were not in the courtroom when Mr. Quick gave his testimony.

A. I think not. When was that?

Q. Well, it was about ten days ago.

A. No, I didn't hear it.

Q. Now, have the even numbered sections been logged off to any extent in that township?

A. They have been, part of them being logged now.

Q. How about the township south of you—I mean the section south of you; south of 25.

A. South of 25 is 36, a school section, owned by the Chapman Timber Company, not logged.

Q. Is any of the land adjoining yours logged?

A. Yes.

Q. Which way?

A. North half of 30 on the east of me is logged. All of Section 24 on the north is logged. They are operating now on 26, on the west of me, on the west of 25.

Q. Do you know what the Chapman Lumber Company are doing with this land after it is logged off?

A. They are selling it.

Q. Do you know what they are getting for it?

A. I understand they are selling at prices all the way from $20 to $60 an acre.

Mr. Fenton: I move to strike out the answer as hearsay.

Q. Is that with the stumps in or with the stumps cleared?

A. That is with the stumps in, just after logging.

Q. Do you know who is the manager of that company?

A. The manager of the camp?

Q. Of the Chapman Lumber Company?

A. Yes, sir, Mr. James McNaughton is the superintendent of the logging camp.

Q. Is there a man by the name of Chapman who is connected with it?

A. I understand there was until perhaps a couple of years ago and he sold his interest to other parties.

Q. Do you know whether Mr. McNaughton has taken any of these logged off lands?

A. Mr. McNaughton told me a few days ago he had bought a quarter section of this logged off land.

Mr. Fenton: I move to strike out the answer as hearsay.

Q. Have you seen very much of the logged off land, enough of it so as to acquaint yourself with the character of the land?

A. Oh, yes, yes, sir.

Q. How is it there as to being rough or level?

A. It is somewhat rough, part of it, other portions are comparatively level.

Q. In your judgment, what percentage of that township could be cultivated after the timber is removed, and the stumps taken out?

A. You mean brought under the plow?

Mr. Fenton: The entire township you mean?

Mr. Townsend : Yes, so far as you are acquainted with it.

A. Well, so far as I am acquainted with it.

Q. Brought under the plow or otherwise cultivated.

A. So far as I am acquainted with it, possibly 75 per cent--60 or 65 or 70 per cent could be plowed. The whole of it—I call the whole of it agricultural land, because it would make the finest of pasture.

Q. Is there any waste land there in that township that you know of, to any considerable extent?

A. No, no. Do you mean rocky land by waste land?

Q. Yes.

A. No, not that I know of.

Q. Any land which, by reason of the character of the soil, is waste land?

A. No, sir. The soil is all of the same general character, shot soil.

Q. Are you still maintaining your home there?

A. Yes, sir.

Q. Have you any home elsewhere?

A. I have not.

Q. Have you made any experiments yourself as to

the use of that land for agricultural purposes or horticultural purposes?

A. Yes, sir, I have.

Q. What have you done in that respect?

A. I have about an acre under cultivation and in garden, vegetables, potatoes, corn, tomatoes, beans, squash, turnips, carrots, parsnips, onions, strawberries, raspberries—fruit trees.

Q. Have you fruit trees set out?

A. Yes, sir.

Q. How are they doing?

A. Fine.

Q. How old are they?

A. They have been set three years.

Q. Strawberries producing?

A. Strawberries produce finely. I had a patch of strawberries last year, 40x50 feet. The rows are 40 feet long and the patch was 50 feet wide. I picked 20 crates of strawberries from that patch, nice berries as you ever saw—nice as I ever saw. I sold about $22 worth to parties who came right to my door and took them away. This year I had just as many berries, but the market was down. I didn't sell berries this year. I bought some fruit jars and some sugar and canned the berries and sent them out, shipped them out to my boys in Aberdeen. I shipped two barrels of canned strawberries, packed in moss.

Q. Packed the cans?

A. Yes, the cans packed in moss. Strawberries were only worth a dollar a crate up there this year.

Q. Now, when did you apply to purchase this land from the Railroad Company?

A. In April, 1908.

Q. To whom did you apply?

A. Well, now, that I couldn't say. I went to what is known as the railroad offices in the Wells Fargo Building.

Q. Yourself?

A. Yes, sir, the land office.

Q. Do you know the name of the officer?

A. I do not.

Q. Your application was rejected?

A. Yes, sir.

Q. I will ask you whether you applied to buy that land with the intention of making a home of it?

A. Yes, sir.

Q. I will ask you whether that is still your intention, if you can secure the land?

A. It is.

Q. Is there considerable timber on the quarter section that you applied to purchase?

A. Well timbered, with the exception of about two acres in this little burn, where I built my house—about

two acres where the fire had burned the timber off.

Q. Have you cut down any of the timber yourself?

A. Very little; a few trees—two or three trees that threatened to fall on my cabin. I cut those, and then other dry trees, stubs.

Q. What did you build your cabin of?

A. Cedar logs, split logs standing on end. First a sill and then split the logs eight feet long, split them in half and stood the logs on end with flat siding, and then plate on the top.

Q. Where did you get the logs?

A. Got them right there on this burn.

CROSS EXAMINATION.

Questions by Mr. Fenton.

Q. Mr. McLafferty, what is your first name?

A. David.

Q. What is the description of the tract you applied to the company to purchase under this Act of May 4, 1870?

A. The northeast quarter of Section 25, 4 North, 3 West.

Q. How did you happen to select that particular quarter section? Who selected it for you?

A. Mr. Snyder, John L. Snyder.

Q. Who was John L. Snyder, a timber cruiser?

A. I don't know whether he was a timber cruiser or not. I could not say.

Q. When did you say you went onto this land?

A. In April, 1908.

Q. Were you there on October 4, 1908?

A. Yes, sir.

Q. Have you a family?

A. I have a wife.

Q. Was your wife with you there at that time?

A. My wife was there with me.

Q. I show you a couple of photographs of "Defendants' Exhibit 270," Nos. 91 and 92, purporting to be taken by Fred H. McClure on October 4, 1908, and first look at No. 91, and say whether that is a fairly good view of your cabin as it was on that date.

A. Yes, I recognize that.

Q. Does that show the extent of the improvements that you had at that time, your clearing, etc.?

A. No, sir, it doesn't show the clearing. It shows the cabin.

Q. Where is the clearing where you had your garden?

A. Farther here to the right.

Q. How far away from the cabin?

A. Well, it is 100 feet, perhaps.

Q. Now, look at 92, and I will ask you if that is a

good picture of your cabin, the other side of it, showing the notice posted on the side there?

A. Yes, sir.

Q. Did you put up that notice?

A. Taken the same date. I did.

Q. Were you there when these pictures were taken?

A. Yes, I was.

Q. Was your wife there?

A. She was. The photographers refused to allow us to be in the picture.

Q. You do not appear in the picture?

A. No, sir, they wouldn't let us to be in the picture.

Q. Did you want to be in the picture?

A. I did, most certainly. And I wouldn't do that again. If a man comes to take a picture of my home, I shall certainly be in it.

Q. Well, now, then, what did you offer to pay the company for this land?

A. $2.50 an acre.

Q. How many million feet of timber is there estimated on there?

A. I don't know. I have been told the cruise was 10,000,000.

Q. Well, 10,000,000 of good merchantable saw timber?

A. I suppose so, yes, sir.

Q. Who told you there was 10,000,000 on there?

A. The man who is located on the southwest quarter told me.

Q. Who is that?

A. Mr. Witte—Fred Witte.

Q. When did he locate?

A. I think he located the year before I did.

Q. But under the same offer of $2.50 an acre?

A. I think so.

Q. And the same statute. And it was a timbered claim that he got, was it?

A. Yes.

Q. Now, where were you living before you went out and attempted to settle on this quarter?

A. I was living—I had been living in Port Townsend the year before, Washington.

Q. How did you happen to come over here and go out on this timber quarter?

A. Well, I heard of other settlers who were going.

Q. You heard of other people who were serving these notices?

A. Yes, sir, settling on railroad lands.

Q. Yes. And it was following the agitation in 1907, and you were one of a great many that went out there on these railroad lands?

A. I don't know of a great many.

Q. Well, how many went out there in your neighborhood?

A. About 30 in our township.

Q. In this township?

A. Yes, sir.

Q. Now, did you all go out there about the same time?

A. I could not say.

Q. Well, didn't you all go out there in the spring of 1908?

A. I don't know.

Q. How many went out about the time you did?

A. Oh, I don't know of more than half a dozen, five or six who went out there that spring. I think the most of these settlers in the township had settled the year before.

Q. Do you know Edgar McLafferty?

A. Yes, sir.

Q. Who is he?

A. My brother.

Q. Well, did he settle, or attempt to settle under the same way that you did, on the southeast quarter of Section 25, Township 4 North, Range 3 West?

A. Yes, sir, and at the same time.

Q. And he built a cabin, too, didn't he?

A. Yes, sir.

Q. Is he still living there?

A. Not there permanently, no.

Q. How long in the year does he stay there?

A. How?

Q. How much of the year does he spend there?

A. I couldn't say.

Q. Don't you know he hasn't been there in the last two years?

A. I think he was in there a year ago this summer.

Q. Stayed just a little while?

A. I don't remember.

Q. Now, don't you know he didn't stay there over ten days?

A. He might not.

Q. And he hasn't been there since, has he?

A. Not that I know of.

Q. Where is he now?

A. He is in Aberdeen.

Q. Gone back to work over at the Aberdeen mills?

A. No, he don't work in the mills.

Q. Well, he has gone back home then, to work?

A. Yes.

Q. Is he a man of family?

A. He is.

Q. Did he take his wife in there?

A. Yes, sir.

Q. How long did she stay?

A. I couldn't say as to that.

Q. She stayed there about a week when they built the cabin?

A. No, she wasn't there when they built the cabin.

Q. She wasn't there over a week all together, was she?

A. I couldn't say as to that. She was there somewhere from one to two weeks.

Q. And she has not been there since?

A. No, sir, she is a cripple.

Q. I know, but she has not been there since?

A. She is not able to go.

Q. I show you Nos. 89 and 90, purporting to be photographs of the cabin of Edgar McLafferty, on the southeast quarter of Section 25, taken by Fred H. McClure October 4, 1908, and ask if you recognize those as his cabin, pictures of his cabin and the surrounding country?

A. Yes, those are pictures of his cabin.

Q. They are fairly good pictures, are they not?

A. Yes, sir.

Q. Of the cabin and of the surrounding country?

A. Yes, sir.

Q. Did you see them taken?

A. I did not.

Q. Who is B. N. McLafferty?

A. He is my son.

Q. Well, did he go out there about the same time you did?

A. A little later.

Q. Well, he apparently has a cabin on the southeast quarter of Section 1, Township 3 North, Range 3 West.

A. I believe so.

Q. Well, is he a single man?

A. No, sir.

Q. Is he a married man?

A. Yes, sir.

Q. Did he take his family out there?

A. He did.

Q. When did he take his family out there?

A. Soon after he made settlement, he built his home, built his cabin.

Q. When did he make the settlement?

A. I am not sure whether it was—it was a few weeks after I went down—perhaps in the latter part of May or in June.

Q. Did he get a good timber quarter?

A. Why, said to be about 3,000,000 feet on that

quarter, I think.

Q. Has he been there the last year or two?

A. Yes, sir.

Q. Is he there now?

A. No.

Q. When did he leave. When was he last there?

A. He was there in September.

Q. How long did he stay when he was there?

A. A couple of weeks.

Q. And was he there the year before?

A. Yes, sir.

Q. How long was he there?

A. I could not say.

Q. A couple of weeks?

A. Perhaps a couple of weeks.

Q. And was he there the year before?

A. Yes, sir, every year.

Q. He was there a couple of weeks?

A. Every summer.

Q. Well, now, how much has he cleared?

A. He has not cleared, to cut down timber, cut down heavy timber, he has not cleared but very little.

Q. Did he have a garden there?

A. Yes, he had.

Q. When did he put the garden in?

A. He planted potatoes that fall.

Q. In September?

A. The first fall, yes, I think so.

Q. And those potatoes ripened next year?

A. Yes, sir.

Q. Winter potatoes?

A. Yes, sir.

Q. Plant potatoes in the fall out there?

A. Plant potatoes in the fall—hoe potatoes in the fall.

Q. How many potatoes did he plant?

A. Oh, not very many.

Q. About five or six?

A. Oh, no, he planted a patch nearly as large as this room.

Q. What did he do with them?

A. Used part of them there.

Q. When he was there during the two weeks the next year?

A. Yes, sir.

Q. And he batched there, did he?

A. He had his wife there.

Q. They were having a little summer vacation of

about two weeks in September?

A. You might call it so.

Q. Where did they go to? Where did they live when they were at home?

A. Aberdeen.

Q. I show you numbers 85 and 86, purporting to be pictures of the cabin of B. N. McLafferty, taken on October 8, 1908, and ask if you recognize those as good photographs of his cabin, two different views, and of the location around them?

A. Yes, sir, somewhat.

Q. Now, how much timber was there on the claim of Edgar McLafferty, Southeast quarter of Section 25?

A. Well, I don't think it is as good as mine.

Q. How much is yours? Yours is about 10,000,000?

A. They say about 10,000,000.

Q. His has about 8,000,000?

A. I presume so.

Q. About 8,000,000. Well, now, who is George E. McLafferty?

A. George E. is a nephew of mine. He is a son of Edgar.

Q. Where did he come from, Aberdeen?

A. He is living in Aberdeen. He is working there in Aberdeen now, yes.

Q. Well, now, he took the northeast quarter of Sec-

tion 1, Township 3 North, Range 3 West. How much timber did he get on his place?

A. I don't know.

Q. About 3,000,000 or 4,000,000?

A. There is as much as that, I presume.

Q. It is a good timber claim, is it?

A. Yes, sir, fairly.

Q. I show you pictures, Numbers 82 and 83, purporting to be taken October 3, 1908, of his cabin there in the woods, with a notice on the front door.

A. Yes, sir.

Q. I will ask you if that is a good picture of two different views of his cabin?

A. Yes, that is his cabin. It does not show his clearing.

Q. How much did he clear?

A. He has cleared in front of his cabin there, which would be back of the position from which the picture is taken, oh, a quarter of an acre, perhaps.

Q. What did he raise?

A. Potatoes, vegetables.

Q. When did he plant his potatoes, in the fall?

A. I couldn't say. I don't know.

Q. How long has he been there—two weeks?

A. No, sir. He was there all the first summer and

all that winter, and part of the second summer continuously.

Q. Is he a man of family?

A. He was not then. He was a single man then.

Q. Where did he go and marry?

A. He married here in Portland.

Q. And then took his wife where?

A. He took his wife there on the claim and lived the next summer.

Q. And then he went away?

A. Now they are in Aberdeen.

Q. And they have not been back since?

A. No, they have not been there this summer.

Q. How?

A. They have not been there this past summer.

Q. Who is E. L. McLafferty?

A. He is my son.

Q. He appears to have applied for the northeast quarter of Section 1, Township 3 North, Range 3 West.

A. Yes.

Q. Did he get a first-class timber claim?

A. About the same as George E. They joined.

Q. About how many million feet on that?

A. I don't know.

Q. Well, estimate it.

A. The timber is about the same as the northeast quarter.

Q. About 8,000,000?

A. Oh, no.

Q. 4,000,000?

A. Possibly.

Q. I show you what purports to be photographs Numbers 80 and 81, taken by Fred H. McClure, October 3, 1908, showing the cabin of E. L. McLafferty, and the timber with two different views, and ask you if you recognize those as fairly good pictures of the two views of his cabin and the surrounding country?

A. Yes, sir. That is a picture of his cabin.

Q. Now, is he living on that at the present time?

A. During the summers, yes sir.

Q. They come there in the summer time and then they go away?

A. During the vacation, and then they go out to get their children in school.

Q. How many weeks in the summer do they stay?

A. Oh, they have been there from four to six weeks.

Q. And where do they go then?

A. Aberdeen.

Q. How far is Aberdeen from this land?

A. About 100—oh, 120 miles, I should say.

Q. How far is this land from the railroad?

A. Why, by the way of the camp, by the way of the Chapman Timber Company's road and camp it is about 13 miles. You are speaking of this particularly?

Q. Yes.

A. Well, that is, oh, let's see—I think it would be about 12 miles by the road and trail.

Q. Any wagon road to these claims?

A. No, sir, not to his claim.

Q. Any wagon road to your claim?

A. After I built it. I built a road for myself.

Q. What do you get into then?

A. How?

Q. What road do you get into?

A. Why, there was an old county road up to, as far as where the Chapman Timber Company's old camp is now. Then there was a road from there to one of these old homesteads.

Q. You mean one of these old homesteads that the Chapman Timber Company bought?

A. Yes, sir, on an even section. Then I built the road from there to my cabin.

Q. What is good timber a quarter in there worth?

A. I couldn't say.

Q. What was it worth about the time you went out there?

A. I don't know.

Q. What is the stumpage worth? What does the Chapman Timber Company pay?

A. They talk about a dollar a thousand.

Q. What do the Chapman Timber Company pay for these homesteads, after they make final proof?

A. I couldn't tell you. I never heard.

Q. Most of these homestead people out there have sold out to the Chapman Timber Company, haven't they?

A. Yes, before I went there.

Q. Now, who is George McLafferty?

A. He is my son also.

Q. He appears to have applied to purchase the northwest quarter of Section 25, Township 4 North, Range 3 West?

A. Yes, sir.

Q. I show you two photographs, Numbers 93 and 94, taken by Fred H. McClure, October 3 and 31, 1908, of what purports to be his cabin, and ask you if you recognize that as two views of his cabin?

A. Yes, sir, that is a picture of his cabin, that is, with the exception that the picture of his improvements was taken before the logs were cleared up, rolled up and burned.

Q. Has he got any garden there?

A. Yes.

Q. Where is his garden?

A. Down this way, in front.

Q. How far away from his cabin?

A. Oh, it is 100 feet, perhaps.

Q. Where is he now?

A. He is in Aberdeen.

Q. Was he there this summer?

A. Yes, sir.

Q. How long did he stay there this summer?

A. His wife was there about six weeks, I think. He was there—he has been there twice, at two different times this summer.

Q. This summer?

A. Yes, sir.

Q. Was he there last summer?

A. Yes, sir.

Q. They come every summer, do they?

A. Yes, sir, every summer.

Q. During August and September?

A. July.

Q. July or August and September?

A. July and August, yes, sir.

Q. That is when there is a vacation on?

A. Yes. They have children to go to school, they

have to get back.

Q. When the children have vacation, they come over here in the summer, and spend a few weeks on the place?

A. Yes.

Q. Then they go back to Aberdeen where they live?

A. Yes, they go back there to educate their children.

Q. Do they keep house? Do all these people keep house over at Aberdeen?

A. Yes, sir.

Q. Do you keep house over at Aberdeen?

A. No, sir.

Q. Well, now, how many of these McLaffertys are there, all of them, out there, that have taken these timber claims, as you claim?

A. There were six, I believe, you enumerated there.

Q. Did you all get together before you went out, and agree that you would go out there and take these timber claims?

A. No, sir.

Q. Who advised you to take them, all of you?

A. I don't know as any one.

Q. You are represented in this suit by Mr. A. W. Lafferty, are you not?

A. Yes, sir.

Q. The Congressman from this district?

A. Yes.

Q. Did you make these filings, applications to file or applications to purchase, under the advice or by the direction of Mr. A. W. Lafferty?

A. No, sir.

Q. What lawyer advised you to, if any?

A. No lawyer.

Q. Did you have these printed forms?

A. Yes, sir.

Q. Where did you get them?

A. From Mr. Snyder.

Q. And did Mr. John L. Snyder employ Mr. Lafferty, too?

A. I believe he did.

Q. And do you know who prepared these printed forms, upon which you made your application?

A. I do not, no, sir.

Q. Don't you know they were prepared by Mr. A. W. Lafferty after he had been back at Washington?

A. I did not know it.

Q. Well, Mr. Lafferty is still representing you in this litigation?

A. Trying to.

Q. Well, he is, isn't he?

A. Yes, sir.

Q. Have you been in attendance on this hearing, Mr. McLafferty, for some days?

A. Yes, sir.

Q. How long have you been here?

A. I have been here since a week ago Thursday.

Q. Well, then, you are interested in the result of this suit, are you?

A. I have been waiting here to give my evidence in the suit.

Q. I know, but you are interested in the result of this litigation?

A. Yes, sir, I am.

Q. Now, will you swear, under oath, that if there had not been any timber on this land at all, you would have gone out there and settled?

A. Had been no timber on this land?

Q. Yes, if there had been no timber at all?

A. And I could have located?

Q. On this quarter section?

A. Yes, sir, I would.

Q. The timber was not any inducement to you?

A. I didn't say that.

Q. What is the fact? Was it somewhat of an inducement?

A. Why, certainly.

Q. That timber claim that you got, 10,000,000 foot claim, is worth about $10,000, isn't it?

A. I presume it is.

Q. Isn't your judgment that you have got the best timber claim in that whole country?

A. I don't know that I have.

Q. Well, you think you have, don't you?

A. It suits me pretty well.

Q. Now, isn't it a good timber claim that cruises 10,000,000 feet of saw timber?

A. Yes, sir.

Q. And that is worth $10,000, isn't it?

A. I presume it is.

Q. And you want to get it for $2.50 an acre from the Railroad Company?

A. Yes, sir.

Q. After it has kept it for 30 or 40 years?

A. I want the Railroad Company to sell it to me according to the terms specified in the grant.

Q. You want it as Shylock wanted his bond?

A. I don't know as to that.

Q. The letter?

A. I didn't want the whole of it. I would be perfectly satisfied with a quarter section.

A. I ought to say that that picture of my place does

not represent my improvements.

Mr. Fenton: I suppose it may be considered that these have been sufficiently identified with the testimony of the witness that these photographs are all part of Defendant's Exhibit 270?

Mr. Townsend: Yes, they have all been offered.

Mr. Fenton: Yes, I say it will not be necessary to re-offer them.

Mr. Townsend: Oh, no.

Whereupon, on re-direct examination, witness testified:

Q. Well, now, Mr. McLafferty, do you want this land if you are not entitled to buy it?

A. No, sir.

Q. Do you know whether the Railroad Company wants it whether they are entitled to it or not?

A. I think they do.

Q. Now, would you be willing to take that place—if, under the law you are not entitled to the timber, would you be willing to take that place and let somebody else remove the timber, and still have a home of it?

A. If I am not entitled to the timber?

Q. Yes?

A. Yes, sir.

Q. If you are entitled to the timber, you don't want anybody else to have it? That is your position today?

A. No, sir. If I am entitled to the timber, I want my share of it.

Q. Well, now, as a matter of fact, while the timber does add greatly to the value of it, would that make a good home even after the timber was cut off, Mr. McLafferty?

A. It certainly would make a beautiful home.

Q. Suppose it had been logged off when you went there, I will ask you whether, in your judgment, you would have been willing to have applied to purchase it in the same manner with the intention to make a home?

A. I would. Of course, it would have been more of a hardship to make a home of it without the timber, but I would have been glad to have gotten it without the timber.

Q. Now, why haven't you cut down more timber and improved more of the land, cleared more of the land?

A. Because of the uncertainty of the case.

Q. Have you understood that you had a right, pending this litigation, to clear the land of its timber?

A. I have understood so.

Q. Who advised you to that effect?

A. Mr. Lafferty.

Q. But how have you felt about taking chances on removing the timber until your rights were decided by the court?

A. Well, I have not felt willing to cut the timber

to any extent until the case was decided.

Q. Well, then, to be honest with yourself, Mr. McLafferty, you are not trying to get that timber pending this litigation?

A. No.

Q. You are not going to take any of it unless the courts declare you are entitled to it?

A. If I did, I could have taken it and sold it to the Chapman Timber Company people, having a spur running across this section that I am on.

Q. Do you know why the photographer would not let you and your wife be in the picture?

A. He said that was the instructions of the people for whom he was working.

Q. What was?

A. Not to allow the settlers to be in the picture.

Q. Did you ask permission to be in the picture?

A. I did.

Q. And when he refused, where did you go?

A. In the house.

Q. Now, do you know why the photographer in each instance took these photographs so that they showed no clearings?

A. I don't know why. They probably had an object.

Q. Could they have taken the picture so as to have

shown the clearings?

A. Yes.

Q. At the same time as the cabin?

A. Yes, they could.

Q. As far as you are concerned, was the camera set at a point where it would show the clearing or where it would not?

A. Where it would not. They went up and down by my cabin several times before selecting the location for their camera.

Q. I will ask you if the location that they selected was not the one which would show the least clearing and the most timber?

A. Yes, sir.

Q. Now, how about these photographs here of E. L. McLafferty? There seems to be a clearing outside. Is that correct?

A. That is a burn.

Q. But there is no timber there?

A. No timber.

Q. And how with reference to this photograph of George E. McLafferty's cabin? Is that true there? Is that why that appears bare beyond there? Is there a burn, or has the timber been removed?

A. Allow me to look at that. No, that is looking over the brow of a hill. That is looking east over the

brow of a hill toward the Columbia River.

Q. So that there is timber beyond there, but it is on a lower plane?

A. Well, I think there is more or less of a burn down in there, too.

Q. Do these photographs fairly represent the roughness of the country in there?

A. Yes, sir, especially that one of mine, I was building a porch there at that time, at the time that picture was taken. I was building a porch, and it shows the stuff scattered about there.

Q. Now, has this debris that appears in the photograph there been cleared up?

A. No, this wood I had cut from a log. These blocks there of wood, and this shows the starting of a porch that I built. The eaves of my house were too low to start a porch roof there, and swing it out, so I set my posts in front, and then ran my porch roof from the post away back to the ridge of my cabin. So it makes a double roof on the south side, and makes a porch there in front about ten feet high in the front. Then since that I have built on another portion here, which makes a nice little bedroom about 10 feet square, and a woodshed.

Q. Then does this photograph represent your present improvements, or simply the improvements as they were on October 4, 1908?

A. Simply as they were the first fall after I went there.

Q. How about this debris here, is that still there?

A. No, that has all been cleared up, and I have raised corn and tomatoes there. I have strawberries on the other side, to the right.

Q. When you say to the right, you mean south of the cabin?

A. Well, I speak now of the tract that runs right down here where you go down here from the cabin, from the porch. On the right of that I have strawberries. On the left, well, I have strawberries too on the left here, but in the foreground I had corn and tomatoes and beans last year, and potatoes.

RE-CROSS EXAMINATION.

Q. How much did I understand you, Mr. McLafferty, to say you had cleared on the land you claim?

A. How?

Q. How much do you have cleared on the land you claim?

A. I have about an acre under cultivation.

Q. So that your corn, your beans and your potatoes, and your strawberries, and all that stuff is all on this one acre?

A. Yes, sir.

Q. It is under fence, I suppose?

A. No, not under fence.

Q. Oh, it is outside?

A. Fencing is not necessary.

REDIRECT EXAMINATION.

Q. You mean there are no cattle roaming in there?

A. No.

Whereupon F. G. McWILLIAMS, a witness called on behalf of complainant, being duly sworn, testified, that he is fifty-nine years old, resides at Ashland, Jackson County, Oregon, and has lived in that county and in Oregon fifteen years. Before coming to this state, he lived at Houston, Texas. His business in Jackson county is real estate and loans, and some mining—interested in some mines. He was raised on a farm until he was twenty-one years old and farmed, he was on his father's farm in southern Wisconsin until he was twenty-one years old. He has not farmed any since himself, but has dealt in farm lands in Jackson county. He knows the farms all over the Rogue River valley and Sam's valley, orchards and farms both, and ranches up in the hills, and is pretty well acquainted all over southern Jackson county, and part of Josephine county in a general way. They produce in Jackson county pretty nearly everything but oranges and lemons. They produce potatoes, wheat, corn, oats, rye, fruit of all kinds; they produce corn, and hay of all kinds, timothy, clover and alfalfa. He is interested with a company in Jackson county that is called the Ashland Commercial Orchard Company, which owns four hundred and sixty acres on Emigrant Creek, about six miles east of Ash-

land, in township 39 south, range 2 east,—it is an old donation land claim. He does not know that he can give the sections. Referring to "Defendants' Exhibit 259," he is acquainted with the territory in township 39, ranges 2 and 3 east, township 38, ranges 2 and 3 east, and is better acquainted with township 38, range 2 east. He has sold lands there and has shown lands all through it, has gone through it with a team and has shown different tracts of land there. One will notice the Willamette Meridian running through there. He is acquainted in township 39 south, also 38-2 east, quite well acquainted, because they have this body of land right in there. He owns eighty acres in section 16, township 38, range 2 east, he owns half of the southeast quarter, and then their Company owns four hundred and sixty acres in 38 south, range 2 east. Emigrant Creek runs along there. A mile south of section 16 is where they own this big tract of land, the four hundred and sixty acres that is in cultivation, that is in township 38 south, range 2 east. He is acquainted with those townships in a general way, referring to townships 38 and 39 south, range 2 east. He is acquainted with township 38-3 east, in the Dead Indian country, and has driven through there. He is only acquainted in a general way, by driving through the country there, noticing the lands. He is acquainted right around Lilyglen, which is a postoffice. This is a level country over in township 38 south, range 3 east, no mountains there, regular plateau for miles. He notices these green markings, which indicate the unsold lands of the railroad company. He is acquainted with the area

in township 38 south, range 3 east—only knows in a general way by driving through there. He would not know which was railroad land from the other lands. But in township 38 south, range 2 east, he knows of several sections of land there but does not know the numbers. In township 38 south, range 2 east, there is a lot of railroad land and a lot of homesteads. He knows that better because he has driven up there and sold lands in there and showed lands, sold ranches in there, and he has driven there several times. He would go up there to show lands for sale. He never went up there for any other purpose. He went up to show the Cove ranch a couple of times. Another time he went up to sell a piece of land—show the land. It was originally a homestead. When he went through township 38 south, range 3 east, he was driving to Crater Lake, and camped over there on Little Butte Creek, and noticed the land. He does not know that he is acquainted with any definite section of railroad land, only that it was pointed out to him that it was adjoining several of those homesteads in township 38 south, range 3 east, that was railroad land. He would not know the numbers of them. This land was adjoining different homesteads, and they were pointed out to him as being railroad lands. In township 38 south, range 3 east, he knows that the land is generally a nice level country. He was surprised after he got over that range the first time he went over there that it was such level land over along there. The road was quite level and the country was level for a good many miles. He would say that in his opinion 50 or 60 per cent of that land in town-

ship 38 south, range 3 east, could be rendered suitable for cultivation. He would think that the land in township 38, range 2 east, would run 50 per cent that could be rendered suitable for cultivation. That is a nice township of land after one gets up over the steep mountain. In getting out, it is a pretty steep hill until one gets up over the steep mountain, and after one gets up to it, it is a kind of plateau, level land up there, just gently sloping, it is not rough and rugged. There are people living all over that community, all over township 38 south, range 2 east, there are homesteaders, making their homes and living right there, opening up farms. The only right good timber lands that he noticed there would be on the Cove Range. They acquired that a good many years ago. They claim nine million feet on that and they own eighteen hundred acres, but that is one end of the ranch, of course. The rest is open land, three hundred acres open land, seeded to timothy and clover, fine ranch. He would not say where that is located, only it is on the east side of township 38 south, range 2 east, he could not give the sections. Some parties from Washington were talking about buying it. He did not pay any attention to the legal subdivisions. He thought that it was purchased from the railroad company, about twenty-five years ago, and it is on Cove Creek, that is one of the best ranches there is and contains eighteen hundred acres. He does not know whether there are any railroad lands that have been deeded or under contract in that amount in this township, that is what they claim to own there. The yellow field there shows the

lands that have been lost to the grant by prior settlement, either under the donation law or homestead law. Mr. Silsby of Ashland owns the ranch and claims eighteen hundred acres. He has a very fine house on it, and barns and blacksmith shops. He is well acquainted in township 39 south, range 1 west. That is a good deal more rolling and rough than the land he has been speaking about. He does not think there would be over 25 per cent of that land in that township that could be rendered suitable to cultivation. It is not timbered, it has no good timber on it at all, it is just brush and scattering large trees. And there are mines up in there, a lot of the timber that was fit for mining purposes has been cut out. The Ashland mine cut a whole lot of the timber. There is no big timber there that he remembers. The only other township he is acquainted with is township 37 south, range 3 west, that is on Jackson Creek, up from Jacksonville. There is quite a lot of railroad land in township 37 south, range 3 west. That country is pretty rolling, although there is some land that would lay pretty good there. It is a mining country in there, several mines in there. He would think that it would average about one-third that could be cultivated. There was some timber over in the north part of the township that was sold to Council Bluffs people for a logging company, and that is the only good timber that was on it. This would be south of Gold Hill, on Jackson Creek. He is not acquainted with any of the other lands in there. That is about all that he is acquainted with. The eighty acres of which he spoke is

located in Sam's Valley, and was originally a homestead, and he has owned that about three years. That land in its native state lays pretty good. There is a lot of timber on it. It would not be good logging timber, but there is a lot of laurel and oak, mostly laurel and oak, some pine. No part of it is under cultivation. It could be nearly all cultivated, it could all be cultivated, he thinks. That was part of a homestead, he cannot remember, but he thinks it was about eleven years ago, as near as he can remember, that was taken up, entered from the Government. They can produce anything on these lands with which he is acquainted, that could be produced in that country, grains and grass, timothy and clover. He does not think any of the lands with which he is acquainted are too high to produce fruits. Fruits are raised in that general community. Fruit has been raised up on the Cove ranch—they raise fruit there. That is in township 38 south, range 2 east, and he thinks they call the altitude about 3800 feet. There are settlers all through that territory. All the homestead land is taken, and lands adjacent, adjoining the railroad lands, are farmed and used for farming purposes.

Q. Now, what is your opinion, Mr. McWilliams, as to whether these railroad lands, if divided in 160 acre tracts, would be suitable for settlement purposes; that is, similar to a homestead, a man to go on there for the purpose of establishing a home and making a living there in the farming industry?

A. You mean the percentage?

Q. Yes, I mean the percentage of the 160 acre tracts that would be suitable for that.

A. Of all the lands we have been speaking about?

Q. Yes.

A. On an average of all of it, well, taking the land that I know west of Ashland and west of Jacksonville, and that east of Ashland, I suppose they would average about 33 1/3 per cent.

Q. Well, now, do you mean 33 1/3 per cent of the land could be cultivated?

A. Yes.

Q. Well, I mean what number of the quarter sections in 160 acre tracts would be suitable for settlement purposes? Not how much of it could be cultivated.

A. Oh, I see. Well, I think three-fourths of them would make homes.

Q. Now, in your opinion, Mr. McWilliams, what has been the effect of the Railroad Company's withdrawal of these lands from the market, their failure to comply with the conditions of the grant and sell the lands to actual settlers in tracts of 160 acres, the effect upon the community there, that you are acquainted with?

A. Well, I think it is very detrimental to the growth of the country. We would have many more people there if they had sold the land in 160 acres—I think easy twice as many in the towns and in the country.

Whereupon, upon cross examination, witness testified, that he had only been there about fifteen years. He knows that that land was on the market from about 1880 up to about 1905, about twenty-five years in Jackson county, and that only a small part of it has been bought, excepting that he thinks they took the land off the market around Ashland in 1901—at least he was told they did. He got that from the railroad agent or local agent at Ashland, P. B. Whitney, who was agent at that time in 1901. The reason for that was they were boring for oil, and he said the company had taken its land all off, it would not sell any of it after they got down about 1500 feet. There was a little oil excitement east of Ashland and the people thought they were going to get oil, and the railroad he thought, according to what Whitney said, withdrew a certain territory there from sale. He does not mean that they withdrew all the lands around Ashland. It was on the east side of Ashland where they were boring for oil. There was a coal find out there somewhere, and they thought they had struck coal. The railroad went in there and with its expert, Professor Dumble, tried to find coal, and found it. The people ran out of funds at Ashland, he was interested in that himself, but they never developed a coal mine there. There are coal croppings in several places throughout the country, from the Rogue River Valley to the California line. They never have found any coal that he knows of, in quantities sufficient to mine. They struck a little gas one time in western Oregon. The country around Ashland, as he under-

stands, has been settled for fifty years, and he heard that a good deal of that cleared land was taken under the Donation Land Law of September 27, 1850, and he knows in a general way that was how it was taken. The Orchard Company in which he is interested, east of Ashland five or six miles, is called the Ashland Commercial Orchard Company, and it has four hundred and thirty-six acres, and is on the donation land claim of Henry Chapman, taken in 1853. It was clear land, they have only a hundred and fifty acres in cultivation, it was never timbered land, but always kind of a prairie. He understands that the Rogue River Valley, the land that is now in cultivation in the Valley, was clear, all clear land in the beginning. But that was nearly all taken up under the Donation Land Law. This little piece of land that he speaks of in Sam's Valley, this eighty acres he bought, he bought it the year of the Seattle Fair, three years ago, and paid five dollars an acre for it. Sam's Valley is north of Gold Hill. This eighty acres of his, is about two miles right west of Sam's Valley. The first section in which Sam's Valley is situated is white, as shown on this map, and the second section west of that in Sam's Valley is yellow, and that shows that that was taken under some law prior to the time the company's grant attached, and that it was lost to the company, if it was in a railroad section. He thinks that his place is two miles west of Sam's Valley, but he may be mistaken. The present ownership map of Jackson county shows the name of Charles Coppock on this land that he bought, but he cannot remember the

section that it is in. It is wild land, joining the Fitzgerald ranch, which is an old settled place, but he cannot say whether the Fitzgerald ranch is a donation land claim. Part of this eighty acres that he owns is in the foothills. Ashland's water system originates southwest of Ashland. Ashland gets its water supply fourteen miles at the top of the butte. The Reserve comes down within three miles of the city. This is known as the Ashland Reserve and contains 16,000 acres, they claim. The Reserve was for the purpose of keeping the water pure for the city. It has timber also. The country within two miles west of Ashland is probably a thousand feet higher than it is in Ashland. It is not very abrupt, not very rough, and not very broken—it is not nearly as broken as it in in some places. It is kind of a smooth mountain, lots of soil on the mountain. There is a wagon road up to the Ashland Mine, and one up to a man by the name of Mahan who lived there for several years. The Ashland Mine is three miles west of Ashland. That country up in there west of Ashland is not cultivated to amount to anything, there is no good saw timber on it either. It has been mined, and some of the big timber has been used for mining and for wood, and the rest of it is rock and chaparral and manzanita, and scrubby oak—stuff of that kind. The surface is not so very rocky, in spots there is rock. He thinks not over one-third of that could be cultivated even it it was cleared. That land is nearly all owned by Mr. Billings and Mr. Anderson, who bought that in an early day, and have owned it for years, he thinks. Billings lives

in the edge of Ashland, and he thinks he has a section—nearly a section—around there, which he pastures and upon which he cuts fire wood. He sells plenty of cordwood at six dollars a cord and delivers wood to Ashland, and that is his only revenue outside of pasture. West of Jacksonville is a mining country. The Opp mine has a 20-stamp mill out there, just two miles from the post-office at Jacksonville. There is a good deal of that railroad land out west of Ashland and in the township south of Gold Hill, referred to in his testimony, which is covered with small stuff on it, with manzanita, chapparal, and greasewood and stuff of that kind.

Q. Don't you know, Mr. McWilliams, that there is about 100,000 acres of this railroad land grant in Jackson County that you could not sell today to anybody, excepting for prospective mines, mining prospects, for a dollar an acre, scattered over the grant, all over it, on account of the rock and chapparral and stuff of that kind—no timber on it of consequence?

A. No, I think there aint an acre there I couldn't sell for $2.50 an acre.

Q. That is your judgment.

A. That is what I would think.

Q. Well, if Mr. — I can't think of his name—in 1896 General Reames lived at Jacksonville. Did you know him?

A. Yes, sir.

Q. An old timer there?

A. Yes, sir.

Q. Now dead. And Mr. Beekman—C. C. Beekman?

A. Yes.

Q. Who lived there for 40 years, testified that there was over 100,000 acres of that land that was not worth twenty-five cents an acre. You would think that they were mistaken, would you?

A. Mr. Beekman is a kind of a pessimist, you know.

Q. Well, isn't there a lot of that land that you really couldn't do anything with, excepting probably having a large area of it you might try to pasture a little of it?

A. Well, the land that I am acquainted with—

Q. Well, I am not speaking now about what you are specially acquainted with.

A. Well, I couldn't speak to what I don't know.

Q. Haven't you been over a lot of this railroad land that you wouldn't consider of any particular value?

A. No, sir, I have not seen any but what I would consider worth $2.50 an acre or more.

Q. Well, what is the best of it worth that you have seen?

A. You don't mean for timber?

Q. Well, for anything.

A. Well, I aint much acquainted with the timber-

land. I would say it was worth from $10 to $15 an acre, a great deal of it.

Q. The timber quarters you would not know what they were worth for timber?

A. No, I aint acquainted with the timber business at all.

Q. You don't handle timber at all?

A. No, sir.

Whereupon witness testified, that there is a great deal of good timber in Jackson county. The best section of timber is in Jenny Creek, he has always understood that was the best. He only knows by hearing people talk about it what is reputed to be the amount of timber on a good quarter section. He understands that a timber quarter to be valuable for timber, that would sell on the market, would have to cruise about three million feet to be called merchantable timber, and according to his information a good many quarters in that county will cruise that and more. He is in the real estate and loan business. He applied to purchase some of this land under the Act of April 10, 1869. He applied for the southwest quarter of the northeast quarter of section 1, township 39 south, range 1 west. It had a prospect on it, he spent quite a little money on it. The railroad company sold him that land. That was fourteen years ago, and he got it for two dollars and a half an acre. He bought that under an arrangement that was then in force where the company sold any land that was considered mineral at a flat rate of two dollars and a half

an acre, on a quit-claim deed.

Q. And that was the custom that obtained in Jackson County and Josephine County on the part of the Company for years?

A. 14 years ago, yes, sir, they sold it. I wrote to Mr. Andrews. Mr. Britt came up there and found me mining on the land, and he says—I was acquainted with him personally—he says, "Mr. McWilliams, you are mining on my land." And I says, "This is not your land." He says, "It is railroad land. I am agent for the Railroad Company." "Well," I said, "I will show you that that is mineral land, and you can't hold it under your grant.' And I got a pan of dirt and panned it, and got a string of gold about that long. I says, "I am going to try to hold this claim. I have a brother who is a lawyer. It wont cost me very much." And he says, "Mr. McWilliams, I will tell you. You can buy that for $100. It is cheaper than to contest." He says, "You will have to apply to George H. Andrews of Portland." So I did, and got that land.

Q. In other words, the company, where there was mineral on the land, and it was possible that there was mineral in it, and it had mineral prospects, the Company had in force a rule under which they could buy this so-called mineral land at $2.50 an acre, at a flat price, under what we call a quit-claim deed?

A. Yes, but they did away with that shortly afterwards.

Q. I know, but that was obtaining at the time you

bought yours?

A. Yes, I tried to buy the other forty.

Q. Many people thought that the company had no right to these lands in which there was any evidences of mineral found, though they had a patent to it?

A. Yes.

Q. That was the advice which you had from your brother as a lawyer?

A. Yes, sir.

Q. And that was a question that had been litigated some in the courts down there before Judge Hanna?

A. Yes, sir.

Q. In Josephine County particularly there were several suits of that kind in which the Company won out? That is right, isn't it?

A. Well, I don't remember about that.

Q. The courts held that the patents were conclusive in the absence of fraud?

A. Yes, sir.

Q. But you paid this $2.50 an acre for this piece of land as mineral?

A. Yes, sir.

Q. Did you develop it?

A. After that I ran about 100 foot more tunnel.

Q. And did you find any—did you make it a paying mine?

A. No, sir, I quit.

Q. Well, why did you quit?

A. Well, my money ran out.

Q. Well, now, isn't that the experience of a good many men who went to mining down there in that country?

A. Well, that their money run out, yes.

Q. They could not develop it, or else it did not appear in paying quantities, sufficient to justify further expenditure?

A. Well, I still think it is a good prospect, only I got a better prospect back of Jacksonville, and paid $1,000 for it. We have a ten-foot hole, and we have developed that and took out $18,000 out of that.

Q. What mine is that?

A. That is the Gold Standard, we call it, adjoining the Opp Mine.

Q. Is that on railroad land?

A. Yes, sir.

Q. How did you get the title to that?

A. Well, we got it through Mr. Tom Reames. He had bought it from the Railroad Company, and he deeded to us.

Q. I see. So the title was out of the Railroad Company and in your company?

A. Yes, sir, in Mr. Reames.

Q. There is a good deal of mineral land over Jack-

son County, isn't there, both placer and quartz?

A. Yes, sir.

Q. A year or two ago there was a discovery of a pocket of some $23,000 or $24,00 dug out, just picked up on the surface of the earth down there, wasn't there?

A. Well, I have heard that, at Gold Hill, yes. Long before my time, though.

Q. But those pockets are scattered all over in Josephine and Jackson Counties?

A. Well, that is the characteristic of all mining countries.

Q. The result was in 1905 and 1906 there was a good deal of activity in mining and locating men on mineral prospects, wasn't there?

A. Well, there wasn't any locating that I know of. People located themselves. They went out and found something.

Q. What I mean is, there were people that were in all these towns, Grants Pass, Medford and Ashland?

A. Yes, sir.

Q. Prospecting and getting out on these different lands?

A. Yes, sir.

Q. Trying to find mineral lands, and trying to locate on them?

A. About 12 years ago there was lots of them, yes.

Q. And it was very active up to about 1906, and 1907, when the Railroad Company, as you say, withdrew the lands from sale?

A. Yes, sir.

Q. And then that created a good deal of agitation?

A. Yes, sir.

Q. And discussion as to whether or not the company could not be compelled to sell these lands?

A. Yes, sir.

Q. Then later, as timber became an item, that added to it, didn't it?

A. Well, I think it did.

RE-DIRECT EXAMINATION.

Q. Mr. McWilliams, you spoke of some other timber tract that you tried to buy there, or mineral tract that you tried to buy of the Railroad Company, other than the one that you did buy?

A. Yes, another 40 acres. I had spent $500 on that, too.

Q. Well, what was the history of that?

A. Well, I developed that, spent $500 on it, and then I thought if I could buy it I would save working the assessments every year, and I made application to buy it about 1905, I guess, and the company would not sell it. They said that they were not going to put their land on the market for awhile on account of the records

being burned in the San Francisco fire. I guess that was later than 1905, because that was after the earthquake, the next year after the earthquake.

The records had been burned, they said, and they had to re-list the lands, and have them passed.

Q. Do you know anything about the practice of the Railroad Company when contests were filed against the mineral land, or by the mineral man against the Railroad Company in the Land Office, prior to the issuance of patent, claiming that the land was mineral land, and therefore exempt from the grant, excepted from the grant, of getting a mineral man to dismiss his contest, and permit them to get patent, upon the agreement that they would sell the land to him at $2.50 an acre, representing that if he had to obtain it from the Government, he would have to pay $5.00 an acre?

A. Well, it would be just hearsay with me. I have heard that that was the case.

Whereupon H. S. PALMERLEE, called as a witness on behalf of complainant, being duly sworn testified that he is thirty-six years old, resides at Swastika, Oregon, on his homestead a few miles from Swastika, which is a little postoffice established by themselves, in Klamath County, Oregon. When his homestead is surveyed it will be the southwest quarter of section 36, township 38 south, range 5 east. He has lived on his homestead about seven years, which was unsurveyed land until about a year ago and the plats have not yet been filed and so far as the records are concerned would

still be classed as unsurveyed land. He has never perfected his homestead filing on the land. It was placed in the forest reserve about a year after he settled on the land. The character of the land through there where his homestead is situated is a large plateau covering several miles in extent and the soil is rather of a clay, sandy clay loam he would call it, and generally speaking it is timber land. His homestead is chiefly valuable for grass and grain and roots and some vegetables and he raises on it rye, wheat, oats—vetch and timothy do particularly well. He raises cabbage, kale and roots, such as carrots, onions and beets. The elevation is too high to make fruit a success, and is about 5300 feet. He has about five acres cleared on his homestead and 150 acres under good substantial stock fence. He has a good substantial house, well built, ceiled and papered, workshop, woodshed, barn and hay shed and fences inside his main pasture enclosing buildings and clearings upon his homestead. There are other settlers up in that community. He would say that right in that locality a very large percentage, he would say 80 per cent of the land could be cultivated and has soil that would be productive and lays in such a position that it could be cultivated when cleared. His homestead is in township 36 south, range 5 east in section 6. The reserve takes in part of section 3, all of sections 4, 5, 6 and 7, township 38 and has been extended since they settled there in 1906. He would judge from "Defendants' Exhibit 259" that his homestead is within the limits of this grant. He knows from his own knowledge that

railroad land adjoins him just across the county line in section 1, township 38 south, range 4 east and the section south of him, section 7, is considered a railroad section, which was unsurveyed until a year ago. He is acquainted with practically all the unsold lands, referring to "Defendants' Exhibit 259" in the north part of township 38, 5 east and about two-thirds of township 38, range 6 east and in 4 east practically all of 38 south, range 5 east. This land lies very level as a general thing. Of course there are ridges and hills through it but as a general thing that township lays very nice and he thinks eighty per cent of these lands in there could be rendered suitable for cultivation after it is cleared. There is a variety of timber on these lands; the white fir predominates there. There is also red fir and yellow pine and a very little white pine which makes up the balance. He has been through townships 40 and 41 south, range 2, 3, 4 and 5 east to quite an extent and has been all through those townships sufficiently to acquaint him with the general character of the lands therein, and in his opinion twenty-five per cent of township 40 south, ranges 2 and 3 east could be rendered suitable for cultivation. Then over in 40 south, 4 and 5 east there is a much larger percentage; that takes it down into a more level country which could be tilled a great deal easier than it could in the other portion. The other portion lies a good deal of it up in the Siskiyou mountains and some of it is quite hilly and rocky. He would say, to be conservative, that forty per cent of the last named townships could be cultivated, referring

to 40 south, ranges 4 and 5 east, and these percentages, as to the entire area that he has covered in his testimony, if the land were divided into 160 acre tracts would continue generally as to land that could be tilled. There are settlements and farms which have been there for some time in the same general communities as these lands about which he has testified. There is one in particular that he thinks is located in township 40 south, range 3 east, where the people have been there forty years, one family and in that same township there are several others that he could mention who have been in there from four to seven years from what they have told him, the only way of knowing, and from personal acquaintances, and while the land that they are located on in this particular locality is the one that he says is twenty-five per cent tillable, he would think they have small patches cleared of 10 to 15 acres and good comfortable homes and the balance is used for grazing and he would say that the grazing land all in through this rough part of the country raises very luxuriant grass, and the wild pea vine grows there, which is considered one of the very best stock feeds that they have in the mountain ranges. These settlers keep stock, goats, cattle, horses, hogs, in various numbers. He had some difficulty in obtaining his filing on his homestead. One reason was the unfriendliness of the Forest Service in holding back their applications and putting in various false reports in regard to them and their first application was thrown down. The second application for survey was lost in the Medford office and hindered for about six months;

then the surveyor's notes were lost in the Portland office for three or four months and finally reached Washington and they are there now, he supposes, they have not heard from them for a long time, and they hope they are there. This has had an effect upon the improvements of his homestead in this way. After they had been there about five years they got so little encouragement from the Government as to their doing anything that they ceased to do very much in the way of improving. They would like to know something definite before they would do very much more. They had spent a good deal of time and money in making their improvements and it is his intention to make a home of his homestead and cultivate the soil and use it for stock raising.

Whereupon, on cross examination, witness testified that he could not say positively as to how much timber he has on his homestead. The majority of the timber on his homestead is a white fir, which is not considered of very much value and he has not had any experience in estimating the amount of timber on the land and therefore his opinion would not be very valuable on that line. He would simply guess that there might be two million feet of good timber on his homestead. He has not cruised it and is not a timber cruiser. His business is that of farming. He was educated in Minnesota, came to Oregon seven years ago; was formerly a farmer; was raised on a farm and with the exception of about eight years that has been his work. He has never been in the Government service and has been in the grocery business and dry goods business in southern Minnesota.

He came to this section of the country where he located, to get a homestead about seven years ago. About that time there were a great many inquiries for timber and when he came out here he had in mind that he would get a good timber quarter, this quarter, his homestead, was shown to him but not as a timber quarter. When he came out from Minnesota he did take a timber quarter under the Timber and Stone Act in section 2, township 38, range 5 east, about three miles east of his homestead. He has been in the stock business to a very little extent while he has been on this homestead. It is a good stock country around there. He has never heard, and could not tell the number of acres in its native state on this out range that are estimated to be necessary to support one head of cattle. The ranchers there, or homestead entrymen, run stock and pasture them out in the common, in the Forest Reserve, and he thinks they pay for that privilege in the Forest Reserves forty or sixty cents a head for the season. Stock raising is the chief industry that these people have and the cattle all run at large over railroad lands too. The Forest Service for some reason or other has been antagonistic to all settlers locating in that part of the country. They do not know what the reason is but nevertheless it has been true that so far as they have been able to learn their reports upon settlers have all been other than favorable. It is not entirely because the Forest Service have reported that these lands were chiefly valuable for timber and were being taken for timber and not for homesteads. There is lots of land in through that reserve that is devoid of

timber and should an applicant wish to get one of these pieces of land, the report made by the Forest Service would be that if planted to timber it would grow timber, or that it was reserved for Forest Rangers Stations and it seems to be the method of the Forest Service to retain these lands as a timber reserve, that is lands that are either actually timbered at the present time or for growing timber in the future.

Whereupon witness testified:

Q. Do you know that Mr. Graves is of the opinion that nearly all of the lands within the forest reserves that are sought under the guise of actual settlers are really desired for timber? Don't you know that that is his published opinion?

A. Well, judging from the method of procedure of the forest rangers through that country, I would think that they do.

Whereupon witness testified that fruits do not successfully grow on these lands on account of their elevation. They are subject to frosts there during the summer months. George W. Jones, the postmaster at Swastika, the nearest postoffice, is a stock man and has a large ranch of 320 acres. Swastika is just a postoffice. For their nearest trading point they go to either Ashland or Klamath Falls. The distance is about the same. Ashland is about thirty miles distant. He is directly on what is known as the Dead Indian Road, the old established road. A man by the name of Whitcomb located him on this land. Whitcomb's principal headquarters

had been at Klamath Falls. He would call the lands which he has described and over which he has been in these various townships a timbered country, but would not say that the chief value of these unsold railroad lands was timber. There is now no demand for timber there at all and there has not been an active demand for timber. He has not known of a single sale made in that locality recently or at all. He is speaking of the locality of his homestead and there has not been very much of a demand for past years for timber lands in these various townships both east and west. He understands that Hopkins has about forty thousand acres in there on the Jenny Creek belt, about twenty-five miles southeast from him. He has heard cruisers talk about two million to three million feet as being a good timber quarter in that country. The man that had been forty years in there, of which he spoke in particular, raises all kinds of produce, fruits and grain, butter and eggs, and everything of that kind and he thinks his place is in township 40 south, range 2 or 3 east, about fifteen miles from Ashland he thinks. He homesteaded his place before the railroad acquired this grant. His name is J. M. Tyler and his postoffice is Soda Springs on the Green Spring Mountain road. He sells to the markets at Ashland and raises produce in the way of butter and eggs and he raises pork for that market and sells that in Ashland and is extensively engaged in that. He makes a little more than a good living. He is not in the hog or egg business as such, but is in the general farming business. His chief income would be from stock, butter and eggs, and

he has been there he thinks about forty years. The other settlers that have come in there later are Mr. Davis who lived back about two or three miles still further. He is off to one side of the main road and back in among the hills and has a homestead which has timber on it and it is just a fair timber quarter he would think. He has, he presumes, about ten to twenty acres cleared and has been there about seven or eight years, and is about two or three miles away from this man who has been there forty years. Another is J. D. Williams, whose homestead is about two miles still further back. He does not think he has a very extra good timber claim and thinks his is principally open land. He could not say how much he has cleared and under cultivation, but thinks he has about twenty-five acres and the balance he uses for pasture. The lands of this man are mostly fenced, some with wire fence and some with rails. They all have stock on the out range, cattle and hogs, that is what they get their living from principally, the stock business. They raise very nice potatoes and strawberries in that locality. Whenever they have more than they need for their own use, they haul it to Ashland, which is their nearest market. There is no stage travel in there, they are off the stage road to one side. The land which has timber on it could not be tilled until the timber is removed.

Whereupon JAMES F. WILSON, called as a witness on behalf of complainant being duly sworn testified that he is fifty-seven years old, resides in Linn County, Oregon, near Crawfordsville and has lived in

that country since 1881. He has followed principally logging but he is farming now. His farm is located in section 20, township 14 south, range 1 west and he owns only one hundred and seven acres. He does not remember how long he has owned it, but he never moved on to it until five years ago, although he bought it a good many years ago. It was a donation land claim. There are sixty acres under cultivation that he farms and he raises pretty nearly everything. He does not raise grain to thresh but raises grain hay, puts pretty nearly everything into hay that he raises. He has a young orchard on the place but none bearing. It is a pretty fair fruit country. He raises pretty much all kinds of vegetables. He purchased eighty acres of land from the Oregon and California Railroad Company about 1885, or 1886, and paid $3.50 an acre for it, it was good farm land, and he bought it for raising stock. He had it about all in farming land and pasture excepting ten acres, it was timber and densely covered with what he would call pole timber. When he speaks of pole timber he means from a little bush up to say ten inches. There was quite a lot of big timber rotten at the top, it was not counted valuable at all at that time. The timber had no value at all and he was not interested in timber. When he purchased the land it was solely purchased for agricultural uses, that is what he bought it for. Referring to "Defendants' Exhibit 259" he lives in section 20, township 14 south, range 1 west. Holley and Crawfordsville are in this township. All north of where he lives was taken a good many years ago and has been settled years and

years in old donation claims pretty much all of it. South of him then begins land that has been taken principally since he came into the country. He is acquainted with the general country south of where he lives now and is very well acquainted with all of township 15 south, 1 west over in the Mohawk country where he is. He has been all over and run his cattle all through the lands between the Mohawk and the Calapooia, that is townships 14 and 15. After he gets off of 14 and 15 he does not know the lines. The other he has been to corners and all around that land in townships 14 and 15 south, range 1 west, and he will say for twenty miles east of his old place through there hunting cattle and deer; that is east of Crawfordsville in townships 14 and 15 south, range 1 west, that lies through a low gap in the mountains, it is high on both sides, all nice land pretty much all of it. There is some in the east, a little on the east part of that, that is getting rough. Eliminating two or three sections he would say that half, or in the neighborhood of half of this land, after the timber that is on it has been removed, could be farmed or tilled. There are two of these sections one could hardly find a level enough place "to whip a dog on," section 11 in 15 and section 2 in 14 he did not make his estimate on each one. Referring to section 11, township 15, there is a mountain which rises up right there and covers that section. The section about covers it. It is very fine timber and only about eighty acres of the south side is bare and very rocky and very steep. Section 2 is on the head waters of Brush Creek and is all broke up in gullies before it

comes down to the main creek. That is very rough in there and heavily timbered, about the best timber there is in that country. There are settlers on the even numbered sections in this area with which he is acquainted in township 14 and 15 south 1 west. Township 15 along the river was pretty nearly settled when he came to the country in 1881, that is in the even sections, part of it in the even sections. There were some settlers off the river and there are some beyond, they are farming, some raising grass, stock and hay. The land about Foster and Sweet Home country is bottom land and is sandy land and is a little better land than where these settlers are in townships 14 and 15 south, 1 west. There is quite a bottom on the Santiam, along near Foster, bottoms and sloping land, it runs back up but this is taking him off of townships 15 and 14 and in a country that he never ranged over only to go up the Santiam River. He is acquainted, however, in that locality, has been up the river clear on across the mountains. There are a number of ranchers there in that Sweet Home country in townships 13 and 14 south, back in ranges 1 and 2 east, but he has never ranged through that Sweet Home country only to travel the main road and he is not acquainted with them, that is, some places that he knows were only just on the road, he has been over six or eight times across the mountains there. Fifty per cent of the land in each 160 acre tract in townships 14 and 15 south, 1 west, could be plowed except those two sections, he would say that a man could get very little tillable land on either one of these two sections.

Whereupon on cross examination witness testified that on the north hillsides of these railroad sections it is good timber, facing the north. Those north slopes on these hills and mountains carry the heaviest stand of timber, it seems to be much older than on the south side. The south side is not much bald in that country, it is all a timbered country. It runs from a pole country up to what he calls second growth, that is, generally speaking, among loggers, called second growth, that is trees that will cut say from four to eight hundred feet to the log, sixteen foot log eighteen to twenty inches at the butt. It has a thin bark and thrifty looking timber. Pole timber that he speaks of is six to eight inches and about like telephone poles. He supposes likely that this timber has grown up since it was burned over at one time but he does not know, it does not show it. It does not show that there are any big stumps there anywhere. He paid $3.50 an acre for this 80 acres in 1885 or 1886, and it is all cleared, in plow land and grass, except about ten acres. There are about thirty acres plowed on the place. He cannot tell just when he sold it. He bought it, he thinks, in 1885 and lived there about twelve years and then he bought another place and he sold that and he thinks he held it about two years longer, which would make about fourteen years, that would be about 1900 when he sold. He got $10.00 an acre for it. He logged a great deal of the time when he was living on this 80 acres; that is he drove team a great deal of the time for other people, hauled the timber, drove the team. He was principally ranching and logging, but not for him-

self at that time. At the time he was living on this eighty he was ranching and logging and raising stock was his business principally. His stock ran on the range. The settlers away from the river have generally sold out. They had principally timber claims and sold their lands, he thinks, the principal part of them along that river and away from the river, to the Booth-Kelly Lumber Company. He cannot tell the year when they sold but somewhere about the time that the Booth-Kelly Lumber Company went in there, about 1890, some odd years. It would be hard for him to tell the amount of timber that these homesteads that were sold to the Booth-Kelly Lumber Company would run, they had cut off and burned up so much timber there before there was any valuation, before it was worth anything and cleared the land and such like and he thinks really they had cut the best of it. What they had left would lay in such shape that they would go through there and estimate what was left, and it would be a hard job for him to tell how many acres they had, or what it would amount to, but it was of sufficient value for the timber for the Booth-Kelly Lumber Company to buy it. They gave up their settlement and moved away when they sold the land. He would say that some of these people had from five acres up to forty acres in cultivation on their homesteads. Most of these people that sold had lived there for a great many years and had done clearing. They did not sell about as soon as they got their patent, they finally sold out afterwards to the timber people. This 107 acres that he owns in section 20, township 14 south,

range 1 west is something a little above two miles from Crawfordsville principally southeast. It was a donation land claim of Thomas Woodfern and he cannot tell but expects it was settled in 1850. It was an old claim and was about two miles from the Calapooia River and lays on Brush Creek. He has not cruised any of these timber lands over on the Mohawk and through townships 14 and 15. He did not do any cruising except once in awhile when some of his neighbors had logged so much that they would want a cruise before they would have the regular cruiser of the Company to go in, that is they would want him to give them his judgment so as to guide them in dealing with the Companies and that was as far as he ever cruised any timber. That was on some of these homesteads that were sold. He never directly applied to purchase any other railroad land excepting this eighty acres. He never wrote to the Company about it but asked Britt, who stopped at his place a great deal when he was looking over this railroad land cruising it and running it out and getting the estimates of the thing, and there was an eighty that laid adjoining him on the north, the other half of the 160 acres adjoining the 80 he had bought, and he told Britt that he had a notion to buy it and Britt said he could not buy it. This was within the last seven or eight years while Britt was doing this work. It must have been right along in 1890 when Britt told him that he could not buy, that the thing was shut down then until they got done, they were not done cruising, they were not half done when they were at his place. Most of the time they were surveying

right around his place. This 80 acres that he wanted to buy from Britt was pretty well timbered and was flat black land and the timber was not of any value then, but it has since become of some value, but he was not buying it then for that. At that time timber was not worth very much, they would burn it up. That eighty he thought would go something like over 1,500,000 feet. He has not bought any stumpage since he got his land or had anything to do with it since he bought the railroad land. They sold their land instead of selling the stumpage. They sold their land out to these timber people, referring to the Booth-Kelly Lumber Company, who owns most of this along the Mohawk River.

Whereupon WILLIAM COCHRAN, called as a witness on behalf of complainant being duly sworn testified that he is sixty-one years old and resides in Linn County, Oregon, two miles north of Brownsville on a place partly in section 19, township 13 south, range 2 west and section 24, township 13 south, range 3 west and is engaged in farming there and raises most everything that is usually raised on a farm, oats, wheat, barley, etc., fruit and vegetables and has about 125 or 130 acres under cultivation and 800 acres altogether in his farm. He has the farming part of his farm rented at present. He raises stock principally, sheep at present. He raises apples, pears and prunes. The place was his father's donation land claim. There is railroad land in the vicinity of his farm, adjoining him on the east and northeast, consisting of forty acres in two separate tracts. Four-fifths of these two tracts could be tilled and cul-

tivated. In its native state the original character of this country was comparatively open. There was scattering timber at that time on a portion of it. He has cleared and cultivated the portion that was not heavy timber. The land he has not gotten under cultivation there is used for pasture. Referring to "Defendants' Exhibit 259" he is fairly well acquainted with the country at large, five or six miles south and north of the Calapooia and east from Brownsville eighteen or twenty miles and he is acquainted north and south five or six miles each way from Calapooia River which runs in a northwesterly direction and rises in a southeasterly direction. He is fairly well acquainted with all the land that runs along the Calapooia for eighteen or twenty miles east of Brownsville. He has traveled over it quite a good deal on each side of the Calapooia five or six miles. He is fairly well acquainted with the lands south of Crawfordsville, a distance of five or six miles on the Calapooia. He could hardly tell the lands with which he is acquainted by township and range and he has given the best description that he could. He has been over that land, hauling lumber and hunting and in hunting he would go off of the river and through the fields and woods there. Speaking generally as to the lands where the railroad lands are situated but not necessarily refering to the railroad sections alone, taking that whole section, he would say that four-fifths of the lands with which he is acquainted along the river could be rendered suitable for cultivation and the balance could be used for stock range. There are people living in this section

farming and engaged in farming on lands of similar general character. Taking the whole country that is settled altogether he thinks that this average generally, if the country were divided into 160 acre tracts, would hold good as to those tracts.

Whereupon witness testified:

"Q. Mr. Cochran, in your opinion, what has been the effect of the Railroad Company's refusal to comply, or its failure to comply with the terms of the grant, and sell these lands to actual settlers at $2.50 an acre, in 160 acre tracts—what effect has that had on the community that you are acquainted with there, if any?

A. I would say that it has retarded the settlement of the country."

Whereupon, on cross examination, witness testified that his father's donation was taken in the early fifties, before 1850, he should think. He is now sixty-one years old and was born on the donation land claim.

"Q. Your father was William Cochran?

A. Yes, sir.

Q. And you are a nephew of former State Senator Cochran?

A. Yes.

Q. Unele Bob, as we called him?

A. Yes, sir."

He has lived in the vicinity of Brownsville all his life. His father's donation claim is about two miles

north of Brownsville, which has a population of 900 people. The Calapooia is one of the oldest settled portions of Linn County.

"Q. Now, you are acquainted in a general way with the lands on either side of the Calapooia for four or five miles and for a distance of twenty miles east of Brownsville?

A. Yes, sir."

That includes the donation claims, and the homesteads and other entries that have been settled along the Calapooia and that are not railroad lands, as well as the railroad lands, and also includes any portions of the railroad land that may have been sold heretofore, within this four or five miles on either side. He thinks most all of that country along the Calapooia there east of Brownsville was taken up under the donation law. These unsold lands that lie within four or five miles of the Calapooia River are in the foothills like, of the Calapooia. Not knowing which are railroad lands he could not say what they are covered with but only just as the country generally is. There is some timber four or five miles away from the Calapooia but not dense, not very large timber. There is some logging timber or saw timber within four or five miles of the Calapooia on the south side in spots. He would say eighteen or twenty miles up the Calapooia, near the Calapooia, there is some saw timber. He has never taken a homestead in this country and never applied to purchase any railroad lands excepting those two forties which have not any valuable

timber but are covered with oak grubs and when cleared one could plow the land, most of it. He does not know what it would cost an acre to grub these oak lands. They used to, twenty or thirty years ago, have Chinamen that they could get to grub the land down in the valley and they paid all the way from $15.00 to $30.00 an acre, depending on the stand. The Willamette Valley and around in Linn County was always substantially a prairie country. He guesses Linn county was one of the largest prairie counties in the Willamette Valley and had more prairie than any other county, unless it was Lane. In the four-fifths of the land on either side of the Calapooia within four or five miles that could be put under cultivation, he includes what had been settled, including donation land claims and all that have been taken in the early days.

Whereupon, on re-direct examination witness testified that what he terms prairie land is that which lies down away from the hills and on the level. There is some grub land out on the prairie in patches, but it is mostly on the foothills where the oak grubs and young fir grow. There was not originally in the vicinity of Brownsville considerable of this oak grub and young timber, small growth of timber on nearly all of those lands, it is second growth fir, that is young fir that has grown up in the last fifteen or twenty years, possibly longer and oak grubs that have grown there since he became grown.

Whereupon, on re-cross examination, witness testified that in the Willamette Valley as late as 1860 to 1870, much of the valley land was not broken up, not

plowed, and tall grass where the stock did not run over it, where it was not burned, came up and was in existence all over the valley,and later on, because there were no fires put out by Indians and others, oak grubs and second growth fir sprang up all over the valley in different parts and that is what he referred to about the oak grubs growing out on the valley. There is not much fir that grows out on the prairie but the oak grubs are a growth within the last forty or fifty years and it was formerly prairie. He accounts for that in this, that there were a few scattering large oaks out on the prairie near where those patches of oak grubs came and he supposes that is what seeded the ground, and he thinks they did not grow before because the Indians burned the land off.

Whereupon, on re-direct examination, witness testified that he thinks the Willamette Valley and Cascade Mountain Wagon Road land grant begins at Sweet Home and does not extend up as far as Brownsville. The Willamette Valley was practically all taken up by old donation claims he thinks and was the early settled part of the State. The early settlers took it that way.

Whereupon JOSIAH H. BEEMAN, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Gold Hill, Jackson County, Oregon, and has lived in Oregon twenty years and at Gold Hill all that time. He has been engaged in the development of mines, principally quartz mining since he came to Oregon. He has traveled largely all over Jackson County and to some extent in Josephine Coun-

ty, examining the opportunities for mining. He has traveled over a good deal of district that is not mineral in character in the way of hunting excursions, and for research of the formations. He has lived and was born on a farm. He worked on a farm in the east, in Michigan for three seasons and he has farmed some in a small way in Jackson County and he thinks that in his experience in Jackson County he has become familiar with the general industrial history of that county to which he refers and he has become familiar with the general character of the soil and other conditions that enter into the question of the adaptability of that land to agricultural and horticultural uses, and has made considerable examination together with men whom he believes to be experts in that line, examining the different types of soil, from an agricultural standpoint in Jackson County. He has been active in connection with his local commercial club in the capacity of president of the Gold Hill Commercial Club and a member of the Southern Oregon Development League, and they have an association connected therewith, with the State League. His interest in the industrial life in that community has not been limited to mining. He has been very much interested in the upbuilding of his community and has tried to gain a knowledge as to the adaptability of the soil for various purposes in the different districts. He had a long conference with Mr. Howard Reed who was carrying on experiments on behalf of the Department of Agriculture. Together they went over the district lying east of Medford, known as the desert land, and made a

thorough examination of the work and experiments carried on by the Roguelands Company, and the possibilities of the success of their proposition in the development of that land. He has noticed the development of the higher lands in the last five or six years and the growth of the trees that were set out on the higher lands, other than what would be called Rogue River valley lands, that the lands lately developed show a better growth than the lower or the high priced fruit lands of the valley known as the Rogue River valley. There is generally a greater depth of soil. The lands are air drained, and to a large extent sub-irrigated. By sub-irrigated he means that the water comes from the higher mountains under pressure of some kind and flows and seeps down the incline through the soil—keeps it moist and prevents the sap souring and allows a healthy growth of the bacteria of the plant. He really knows very little about it from a theoretical standpoint and wishes to testify only from practical knowledge and watching the industry from a personal visit and investigation. He considers the hill lands the most valuable in Jackson County for agricultural purposes. He has made observation as to the usefulness of the so-called decomposed granite land. That land is largely the type of soil in Josephine County close to the vicinity of Grants Pass. It is called there by those people, volcanic ash, to him it is known as granite. Those lands are very valuable lands with irrigation. He rather thinks that most of the granite lands require irrigation. He could not testify to many particular tracts of land in the

granite of Josephine County as much as Jackson County with reference to the growing of fruit, grapes and other agricultural and horticultural crops upon those decomposed granite lands without irrigation. There is very little of the granite lands in Jackson County. He does not know of experiments in these granite lands without irrigation. He knows in a general way where the railroad lands are situated in Jackson County which are involved in this case and these railroad lands average about the same as the other hill lands in Jackson County, which he has been describing, as to adaptability as to soil for the uses of which he has been speaking. His testimony upon that subject includes the communities where these railroad lands constitute a part of the lands. He knows of a good many places where they are raising very fine fruits on lands involved in this case now owned by the Railroad Company. He knows of instances where the adjoining lands are used. There are a great many places where the Government land has been taken up by the settler, homes built and made thereon, and while the railroad lands adjoining are lying idle, they are the same character and types of soil.

Whereupon witness testified:

Q. I will ask you whether, in your judgment, speaking of these railroad lands as a whole, 160 acres of them, if open to settlement, would support a settler and his family?

A. Yes, sir. There are a great many 160-acre tracts that I believe would, if the lands as a whole were thrown

open for settlement.

Q. Are you familiar in a general way with the manner in which the railroad company has sold or refused to sell its land in Jackson county?

A. Yes, sir, I have had a large experience in that line.

Q. I will ask you to state whether the policy that has been pursued by the railroad company has promoted or retarded the development of industrial and commercial conditions in Jackson County?

A. It has very decidedly retarded the commercial development in all lines of industry.

Q. Has that effect been restricted to the railroad lands themselves, or has it also extended to the intervening lands?

A. Very largely to the intervening lands in certain districts.

Q. How? Just explain what effect this policy has had, and how it has brought about the result you refer to?

A. Well, where the government lands would lie along established county roads, that is, along the good wagon roads, that land has been taken up and settled upon to a large extent by homeseekers; but in districts where there were no school facilities nor good wagon roads, those districts have been absolutely retarded and unsettled, I think by the main reason that the grant has been taken off the market.

Q. What lands?

A. The railroad lands.

Q. Now, is there any reason why roads could not be established and schools established in those communities if the lands were open for settlement?

A. I know of settlers that have gone upon the railroad lands and have attempted, apparently in very good faith, to make homes, that afterwards they found that they could not sustain themselves for the reason that the neighbors were distant, there were no means of ingress and egress to the property, and that the railroad refused to sell them the land after they had made settlement thereon, and that good lands for agricultural purposes have been taken up as timber claims, and have been sold to timber dealers, which has retarded the development; whereas if the lands were thrown open as is the purpose and intent, as I believe, of the grant—that the country would have been largely settled up, if conditions were different. Did you want me to go on about the mining interests?

Whereupon witness testified that on the very high lands adjacent and tributary to Gold Hill for a radius of eight or ten miles in most all directions, they raise very fine pears. They bear very early, from one to two years earlier than the fruit in the lower Rogue River valley proper, on very high lands he has taken pride in sending grapes and fruit to his friends in Portland and San Francisco. He thinks that fruit and those grapes are superior to the fruits and grapes that grow in the

Rogue River valley proper as to quality and he thinks they can be grown to a greater degree of profit than the lands known as, for instance the Burrell orchard, which is the highest priced land that has been sold to his knowledge in Jackson County. In most instances irrigation on these hill lands is not necessary. He thinks there are a great number of tracts of 160 acres that have from five to 160 acres upon them that would sustain a family and that more than fifty per cent, approximately, of the unsold railroad lands situated in Jackson County and in that part of Josephine County with which he is acquainted in quarter sections, would be fit for settlement and the maintenance of a settler and his family, that is more than fifty per cent of the quarter sections, more than fifty per cent of the quarter sections contain enough of this land to sustain a settler. There are a great number of 160 acres that would support a large number of people. These lands that he speaks of are scattered throughout the county. There is considerable of this railroad land involved in this suit in the vicinity of Gold Hill, a great many acres he believes, that is, in all directions from Gold Hill, within a radius of ten, twelve or fifteen miles. There are considerable desirable railroad lands within that area that are not timber lands to any degree. The lands about which he has been asked to testify here are practically non-timbered lands, nothing but fire wood and brush on them. The timbered section of Jackson County is up in what they call the Evans creek district, the Butte creek district and some in the Siskiyous and he is acquainted with those. He

thinks these lands, after the timber is removed and the lands are cleared would make very fine agricultural land to a large extent. He has been engaged in quartz mining, as he has said, for twenty years. He purchased quartz mines, paying pretty large sums for the mining properties and a great number of them had been situated on odd sections owned by the Railroad Company. He filed protests in 1895 and 1896 against the issue of patent to the railroad company for these lands, and on other tracts the railroad company made application, and he made protest after the application had been made, together with those interested in the development of mines in Jackson County. Hearings were ordered by the Department in proper order, and at the hearing the railroad was represented in a great number of cases, in fact, all the cases, he believes by N. E. Britt and a corps of assistants, he had five generally. All of those witnesses testifiled to having qualifications as to farming experience. He is testifying now from his personal appearance in the cases and from his personal knowledge of conducting the examinations in these cases. The witnesses produced by the Railroad Company were to the effect that these lands were chiefly valuable for agricultural purposes and in all the cases the lands involved in these particular cases were very high or mountain lands. In section 29, township 35 south, range 3 west, where his stamp mill is situated, the lands are very steep and the railroad witnesses testified that they were very fine agricultural land and he thinks that they were right and that they are good agricultural lands, and also mineral

lands. He had taken out a great many thousands of dollars in gold and silver from the lands now owned by the Railroad Company and withdrawn from sale. The fact that they are withdrawn from sale has retarded to a very large extent the mining industry of Southern Oregon. It is difficult to obtain capital for development of any enterprise until they can show an absolute title to the property, which of course is prevented by the refusal of the Railroad Company to sell the lands. In most of the tracts of land with which he is familiar and where these contests were heard, there is very fine agricultural land. His own land is in section 29, is quite steep, but the soil is very deep. He has been able to raise very fine vegetables, all the vegetables necessary for his camp. He has there grown potatoes and pea vines eight or nine feet high, and they had an abundance of peas on them. They had very large potatoes, some as nice potatoes as he every saw, both as to quality and smoothness, that is true of a good many of the mining camps, placer mines and quartz properties. He would say that there were more than twenty instances of contests of the kind he has described where the testimony was of the character mentioned. These contests commenced in 1896 and ended on October 14, 1912. Mr. Britt made the proposition to him that if he would withdraw his protest and let the Railroad Company obtain patent to the land on their agricultural value it would agree to sell him the lands after it had obtained patent. The company made that proposition to most, or to a great number of the protestants, to his personal knowl-

edge and he knows of instances where it was accepted by the protestants, who did withdraw their mineral protests and allowed patent to issue to the Railroad Company. He, however, refused to enter into any proposition of that kind, as he was sure that the lands were chiefly valuable for mineral, and he carried his cases to their conclusion, which resulted very largely in favor of the Railroad Company and against the miner for the reason that it became generally known that the Railroad Company would sell the lands to settlers; and there are those who believed that the Railroad Company would sell it who are at this time unable to buy the lands that they were interested in. The title of N. E. Britt was, he believes, chief surveyor of the Oregon and California Railroad Company and he had charge of the cruising in that particular Southern Oregon district. Witness took into consideration the question of clearing the land and reducing it to cultivation in determining its usefulness for agricultural and horticultural purposes. It is particularly noticeable as to the value of these lands from a practical standpoint in a trip from Gold Hill south on what is known as the Mountain road to Jacksonville, that land, lies very steep and high above the valley proper, commanding a full view of practically the whole of Rogue River Valley and until a few years ago was regarded as of no value, but in a great many instances it has been demonstrated beyond a question of doubt that those lands are the best fruit lands in Jackson County and it has been shown that the higher trees have the greater growth, in speaking of trees in the

same field planted on a steep hillside, from the highest point down to the black alluvial soil in the valley, that the higher most tree would comparatively be four or five times larger than the tree on the lower line down, or what would be known as the river, the alluvial black soil showing that the tree had some advantage, or a large advantage over the lower trees, which is accounted for by being air drained and possibly sub-irrigated. In mining he has known sub-irrigation to be over 3300 feet in elevation, at the top of Jump-off Joe, they mined on the very top of the mountain there, yet at the depth of sixty feet it was necessary for them to furnish the miners with gum clothes, gum coats and gum boots. And in the fruit lands some six or seven hundred feet above the elevation of Gold Hill, which would be 1600 or 1700 feet in elevation above sea level.

Whereupon witness testified:

Q. Mr. Beeman, I will ask you, from your knowledge of the general conditions in that country, your observation of the developments of the lands as a whole, whether in your judgment, if these railroad lands had been offered to settlers, they would have been settled upon, improved and developed, and would now sustain settlers and their families, and homes on them.

A. I most assuredly believe that they would be largely settled upon if they had been sold or had not been withdrawn from sale.

Whereupon witness testified, that there is practically no saw timber in the immediate vicinity of Gold Hill

and there is no timber on the land along this mountain road to Jacksonville, referred to by him. He is speaking from traveling over the lands and through across the mountains and going through and over the trails and personal observation and study of the types of soil in the different mineral belts. He believes that he is one of the first men that met Mr. Townsend when he first came to Oregon to investigate this case. He has given the subject of this suit special thought and consideration to a large degree since that time. During the first trip of Mr. Townsend here he went to the southern part of the grant and he took him over some of these lands that he is now referring to and took many other people too. He is quite enthusiastic as to the adaptability of these lands as to their natural resources but he has not intentionally permitted his enthusiasm for the value of these lands for the purposes stated to influence his judgment or testimony. He is positive he has not done so and is sure he has not been over enthusiastic in his work and study of these, and in any testimony that he might give here.

Whereupon, on cross examination, witness testified that he practices before the land department but has not been admitted to the bar of the State or to the Supreme Court of the State. He came to this state from San Francisco where he was in the merchantile business for a number of years. He lived in San Francisco all his life, with the exception of three years when he went to Michigan. He considers that he is a mining man and that that is his business at the present time. He owns

the Lucky Bart mine in sections 29 and 30, township 35 south, range 3 west and the Alice group of mines situated in section 11, township 37 south, 3 west. He is the sole owner, with his wife, of the Lucky Bart property. In the Alice group he has associates. He has some lime locations that he owns himself, two-thirds and an associate one-third, in township 36 south, range 3 west, in section 20, and he has some stock interest in other mining properties. He thinks he has 7,000 shares in the Gray Eagle, or the Oregon Gold Hill Mining Company, which is in section 29. He thinks the par value is $1.00 a share. He received that as an owner of the claim, but did not have title to the claim, the record title belongs to the Railroad Company, he has a possessory mining title. They have run several hundred feet of tunnel, winzes and shafts on there. At the time that he sold it they had taken out but very little gold, it is a gold mine, it was development work entirely, their ore was all on the dump. That land is patented to the Railroad Company and is part of the land that he lost in these mineral contests. He did not organize this company and he does not know who organized it. There are two claims, practically forty acres located on 1500 feet by 600, which would be 3000 feet by 600. He purchased them from the original locators and they were located under the mineral law and he purchased the claims from the mineral claimants. The mineral claimants protested and won out but in making the segregation they were not awarded the amount of ground that they were entitled to under the decision. The decision was that the seven

claims of the Lucky Bart Mining Company should be cancelled from their application. In making the segregation and survey, the railroad surveyor filed an affidavit that he could not find the claims of record as were testified to in the case, although they were of record. In making the segregation, for instance, they found the claim of Buckskin, which the notice said was 1500 feet, they segregated only 1400 feet and took a patent to a fractional lot known as lot number 2. The Railroad Company made the survey. Witness and associates were awarded only the portion of the claims covered by their location and they got a patent for, he thinks, less than one hundred acres, because it was mineral. He guesses that they are squatters and that that is their only right to possession. They have constructed a stamp mill, built a road at large cost, and extracted a great many thousand tons of ore. The portions of the mine owned by himself and wife that he did not receive title to, he purchased from the Railroad Company at $2.50 an acre in 1901, being 52 and a fraction acres and the deed was made to him personally and he owned it individually. They had a contest as to section 11 on mining claims that they purchased in township 37, traversed through the entire section 11. They did not get a patent to any of that—the Railroad Company got the patent to it. He won out as to that contest, but was wrong as to the section. The testimony was that they supposed that they were in section 13, the decision was that the lands claimed were more valuable for mineral. The railroad got a patent to the land, however, under some process that he

did not know at the time how it was done. He had a suit in the courts to set aside the patent, which was heard in Jackson County. The decision was not to set aside the patent, he alleged in his complaint that the land was mineral but it came about in a way that the Railroad Company sold its mining land to others. He and his associates did not get any title from the Railroad Company but sued a party who bought from the Railroad Company. In that instance the price, instead of $2.50 an acre was $12.00 an acre, but the court held that this party was a trustee for witness and associates. The title of the case was J. H. Beeman and John R. Mitchell against William Mendenhall, the case did not go to the Supreme Court. Witness finally lost the land. Judge Hanna decided that Mendenhall had a right to buy it from the Railroad Company at $12.50 an acre. Judge Hanna ruled that the patent was subject to attack, but title having left the Railroad Company under the patent he and the litigants fought it out between themselves and he lost. That was the way it was done. He did not appeal to the Supreme Court because he was pretty short of funds at that time. He had purchased forty acres where his tunnels were from the Railroad Company which would be the northeast quarter of the northeast quarter of section 11, where his development work was. He had purchased that in 1901 through his associate Mr. Mitchell. He is assessed in Jackson and Josephine counties for last year something close to $10,000. It is not all on his mining property. He has some property in Gold Hill that is assessed, some store buildings and a residence.

Most of his assessment is made up of Gold Hill property, practically all of it. He is assessed on this mining property at $6.00 an acre or 52 and a fraction acres in section 29 and forty acres in section 11, which would be 92 acres at $6.00 an acre, and also is assessed for the stamp mill and he does not know just what that is assessed at, but about $1,000 for improvements, something like that. He is assessed on this mining property then for about $1500.00. He was never at any time in the business of promoting applications and so-called settlements of these lands about the time Mr. Townsend first saw him in 1907. He never in any instance was connected with Mr. Hammersley or anybody else in the business of making application and tendering the $2.50 an acre on these printed blanks. He absolutely refused to have anything to do with such a proposition. He did not locate Frank Gingrass on some railroad lands, but he did have something to do with it. Gingrass located on a piece of railroad land in section 19, township 33 south, range 8 west and attempted to locate on 160 acres. The place is northeast of Gold Hill about twenty odd miles. Mr. Gingrass was a man who worked for him in the mines and he knows a great deal about the railroad lands and wished to settle upon them and witness assisted him. He gave him the use of animals and a horse and some implements on settlement. This land had considerable saw timber on it, he would judge about from two and a half to three million feet. Gingrass lived there for about a year and left it after the railroad refused to sell it. Gingrass offered $2.50 an acre under this act and

was refused, he was a single man, and cleared up quite a piece, built a cabin with windows, floors and doors in it, built a corral, dug a well and cleared, he should judge, not over an acre and a half, something like that, and stayed there nearly all the time he was building his house while he was there. Witness did not furnish him money to build it, but only assisted him by furnishing him horses and stock and stuff of that kind. Gingrass pastured stock out there, he did not have any cattle but had some horses, one horse belonging to witness and Mr. Ray had two most of the time there and with that exception witness had nothing to do with locating people on any of this railroad land. He thinks he was interested and heard about twenty mineral contests in all, in a great many instances he was attorney for the mineral claimants. Hammond & Vawter were first engaged for the Railroad Company, in a large number of them W. I. Vawter, who is now manager of the First National Bank of Medford, was one of the firm and one of the leading and responsible lawyers of southern Oregon. A. S. Hammond was at Medford at that time, the firm was Vawter, Hammond & Webster. He does not remember any others who represented the Company in these hearings, he thinks Judge Durham of Grants Pass succeeded when Vawter retired from the service of the Company. Dexter Rice of Roseburg also appeared in these contests. Dexter Rice is still local attorney for the Railroad Company in Douglas County, was interested in this last case. The first of these contests he had anything to do with, was about 1897 and these contests strung

along from that time down to October 14th last. He won in all of them and then did not get the patent, in all of them the Company got patent finally to some of them, portions of them, that is, he got the decisions but the Company got the land, not all the land, that was true in section 11, but this was not generally his experience that he would get the decisions and the Company would get the patent to the land. That happened in section 11 and partly in section 29; that is, as to the fractions of the claim. It was in 1897 or 1898 that Britt made this offer to compromise. There were a good many people who bought this railroad land that was thought to be mineral in character at a flat rate of $2.50 an acre and took the Company's deed out there during that time. There were a lot of people who did not have any contests with the Company, rather than enter a mineral claim they would buy a forty from the railroad wherever they thought there was a mineral prospect, that was a way that was not regarded by himself or others familiar with it as a proper way to do it. A good many people who had no controversy with the Company would go to the Company, thinking they had a prospect for a gold mine on a forty and would inquire of the Company what it would take for its title to that land, finding it to be patented, and they would buy it at a flat rate of $2.50 an acre. The business was handled for years prior to the time the land was taken off the market in 1905 or 1906 from $2.50 an acre up. The mineral land did not go at a flat rate. This land in section 11, after the trial and hearing and the railroad had received the patent to it, he at-

tempted to buy it after they had got a patent. He did not lose, he won, but he never got the land. After he had this contest and refused to compromise he then wanted to buy the land. The Company wanted to sell it based upon the true value of the mine, and in this instance they would not sell it to him at $2.50 an acre, he could not get the Company to set any definite price, they said it would be based upon the true value of the land as given by Mr. Mills. None of this land had any good saw timber on it, practically none. He supposes there is a lot of good agricultural land on it, but it was more valuable for mineral. He made proof in his cases that the land was chiefly valuable for mineral and that it was not agricultural and he produced witnesses as to the mineral character of the land, but he did not protest that it was not fit for agricultural uses. The decision of the Land Department or the Local Land Office was in his favor on that question, they held it was chiefly valuable for mineral. The Railroad Company finally got patents to some of the claims but not to all of them. He does not say that he thinks that particular land is chiefly valuable for agriculture. This decomposed granite that he speaks of is hauled by the carload by the Railroad Company and distributed in its various depot grounds and yards, as side walk and other stuff of that kind, so that a man going along the road down there and stopping at Grants Pass or Medford or Gold Hill would go out on this granite gravel walk around the railroad buildings and find it perfectly dry and almost solid. This would be agricultural and horticultural with water on it, he has

seen it demonstrated. He has seen very fine gravel lands in the Evans Creek district demonstrated to be orchard lands. Evans Creek lies immediately west and northwest of the town of Rogue River between Grants Pass and Woodville. The granite belt commences right close to the railroad. People did not settle largely upon this granite land, but have recently settled upon the granite land a great deal along the upper Evans Creek from Rogue River to what is called Bybee Springs, sixteen or seventeen miles. They raise alfalfa and onions on this granite land, which diffuses very readily. It is a different character of granite than that hauled by the Railroad Company. It is granite soil, and looks like mighty poor land to look at it, it is granite soil and there is some earth in it, it is not about three-fourths earth, he thinks it is largely just the decomposed granite. Granite is rock but is of different character, some has more mineral in it, more iron. He thinks that this desert land has not been attempted to be cultivated until about two years and a half ago, something like that, there are several thousand acres in that desert. He does not know where these people came from, they located water and built ditches, and it is called the Roguelands Company and the ditch is called the Butte Creek, he believes. The first proecdure to develop that desert was to take a surveyor out and survey off certain distances where they were going to blast for trees, and set stakes where they would put holes, and there is soil of about eighteen to twenty-four inches deep, then they encounter what is known as hardpan and it averages about eight or nine

inches in thickness and is a sedimentary cement that has settled there, rock formations, and is what they call cement. They get below that by drilling a hole and blasting it, then they have a depth of rock and gravel underlying that, washed or boulder gravel, showing that at one time that land was at the bottom of an inland sea and on top of that above the hardpan is a silt soil of clay and it shows there has been an erosion from the higher hills at one time. At one time it had not occurred to him that it was worth anything at all. He does not think these people are going in there drilling holes down through this hardpan, blasting the soil and rock up, taking a steam plow with a depth of about two feet and undertaking to break through that hardpan in that way, they are not blasting altogether, that plow is not for that purpose, they plow the sub-soil with the plow, it is full of little ravines and pot holes, so they can build their ditches and irrigate all the land. They are not plowing under this hard pan where they are planting trees, they blast it.

Whereupon witness testified:

Q. Well now, they are planting young trees on there, two-year-old trees, aren't they, and getting water on, and they are making nice blueprint illustrations of these five and ten-acre tracts with this water, and selling a contract to carry water on there for a number of years, and trying to sell that to the general market at so much an acre? Isn' that the scheme?

A. I know nothing about that part of their proposition.

Q. They haven't yet got to the blueprint stage, the lithograph stage, have they?

A. I didn't go there for that purpose. I went to ascertain whether or not the lands were adapted or could produce.

Whereupon witness testified, that these people have a tract there, he should judge there were eight or ten acres in it, that they use for a demonstrating and experimental farm and experiment station, and he should judge, from eating the fruit of the trees, that there is water on the land to keep the trees green. He has eaten very fine fruit off of these trees, three year old peach trees, which he presumes the peach trees are fillers, he knows what a filler is and believes they are used for that purpose. They are planting apples and raising canteloups, tomatoes and watermelons on this experimental tract. He should judge the apple trees are about three years old, he does not remember whether they are bearing yet on this place. There is one place that has been there for a number of years, it is an old orchard, part of it, that is where their experimental farm is on that old place, an orchard of apple trees to be commercial must be about eight years old in the Rogue River valley proper, but in the higher lands, such as he knows, people have made a commercial profit in less age than that, about six or seven years, that is apples, and five years for pears. There is a person on these hills that he knows of, that he can name, that is today selling commercial apples to the trade. His

name is Firman Zana and his place is on a high mountain west of the Sams Valley country north and west of Gold Hill ten miles, he is on a homestead, witness does not think it is on a donation but thinks it is a homestead. He believes it is section 12, about three miles from Sams Valley postoffice west, and there are other places right along there in that neighborhood. He could not state the amount of Zana's sales, but he has bought apples from him for the last eight or ten years, quite a lot of fruit for family use. That piece of land has been settled, portions of it, for a long time, Zana set some out, and has some trees there that are four or five years old that are now bearing. It has been settled around Sams Valley for thirty or forty years, but this hill land has been improved lately, in the last few years. He does not believe that these places were taken up thirty or forty years ago, but he does not know when this place was taken up. There is a small amount, commercially, of grapes on these hills. George Lyman has a claim on very high land, just a small vineyard, he would judge about two or three acres, something like that. It has been put out a number of years and is an old vineyard, and sells grapes mostly to the stores there. He thinks they ship some from Gold Hill, which is about three miles away north. Lyman has been living there ever since and he has known him during his residence there. He guesses that his place was a donation or a homestead, settled a long time ago. Mr. Johnson has a vineyard on a very high hill, about a mile and a half from Gold Hill, it is a small place, something like two or three acres in vineyard. He sells

to the stores down town and to the people and he does not know that he packs any grapes for shipment. Witness has bought them in boxes, and has sold them for him. They are Tokay grapes and a dark grape, which he believes he calls Berkshire, some name like that. Johnson has been there for a good many years. He does not know where the exact corners are but he understands this vineyard was on railroad land that Johnson squatted on it. Johnson has been there during the residence of witness in Gold Hill and he thinks Johnson ought to have good title by limitation. Johnson has a ranch there that they call the Bible Ranch, he does not know positively whether or not the land Johnson squatted on is railroad land, he never talked with him personally about that, he was testifying as to the high lands, as to the production of the land, but he does not know whether this particular land was railroad land or not. This Bible Ranch was planted and cleared of brush on both sides of a very steep ravine, and it looks from a distance like an open book, like the pages opened up in a book, it is spread, his fields are, clear along his lines, which gives it that appearance, one can see that a good many miles, this place was pretty high and pretty rough. The Sugar Pine Door & Lumber Company did not cut over a good deal of land around the country that he has been testifying about, nor around Gold Hill. Gold Hill is a place of about 500 people. He has lived at Gold Hill during the whole time that he has been in Oregon. He has tried to do his part as a citizen, to promote the settlement of the southern part of Oregon, or of this portion of the

country. He is not in the real estate business and does not solicit any real estate to handle. He has never located, or tried to locate people on Government lands. There is a lot of Government lands in Josephine and Jackson counties unsettled and these lands are about the same general class as the railroad lands that are unsold. The lands that are more valuable than the lands around the Burrell orchards around Medford are largely taken. The balance in this district are not taken because it is pretty hard for people to maintain themselves on account of being away from the main roads as established by the county. They could get roads in there by taxation, but a poor man coming in to settle, it is difficult for him to bring these things about. He thinks that some of the Burrell orchard lands, which are about three and a half miles southwest of Medford, which had eight or nine year old pear tree orchards on them were sold for $2,000 an acre and other orchard land that has two or three year old Spitzenbergs or Yellow Newtowns is sold from $800 to $1,000 an acre. They have several thousand acres of that valley land there.

Whereupon witness testified:

Q. Well now, then, if this unsold government land, and these hill lands generally, are worth more than that kind of land, I should think that they would have these big orchards all up on these hills.

A. They have.

Q. Where are they?

A. They are on the line of the road going south

from Gold Hill toward Jacksonville and on the west side of the road it is steep and mountainous. The east side slopes down to the Rogue river valley proper. In the past seven or eight years they have built and developed very fine orchards on that hill land.

Q. Name some of the people that own some of these orchards, and how large the orchards are within that territory seven or eight miles from the railroad.

A. I don't know the owners of the big orchards there.

Whereupon witness testified, that he calls twenty-five or thirty acres or ten acres a big orchard. They have cleared the land of the grubs and stumps and there is a lot of rock left. They have planted these trees on that kind of land. There are some of these trees that are eight or nine years old, the Van Vleet orchard, he could not tell how many acres each of these people have, but they have upwards of ten or fifteen or twenty acres. One man who ran for sheriff one time, whose name he cannot think of now, has an orchard. There are eight or ten such places along that hill land. They paid $200 and $250 an acre for it he is told. They bought it from the owners of it along there. Mr. Niedmeyer owns a tract there that is undeveloped that he has refused that much money for, he thinks, he would judge that it is about three and a half miles from the line of the road. It is all pretty rough and steep, and was not covered with timber at any time but with brush, principally shake brush or chaparral brush, as it is called. Some portions of Jackson County

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have a lot of very fine timber in it, Josephine county has a lot of fine timber. These unsold railroad lands are pretty well covered with timber in the upper districts, not in the districts around Gold Hill. The foothills are not covered with anything except scrubby brush and things of that kind, and as one goes back from the foothills he gets into the timber, away up on the upper Evans Creek is what they call the timber belt, that is a part of it. He assisted Mr. Townsend in working up the testimony in this case of the witnesses around Gold Hill and Jackson County to some extent. He was not employed by the Government to do that. He has been here in attendance at court about ten days. He did not have a number of witnesses here from Gold Hill that he brought down, or that he notified Mr. Townsend would be good witnesses. He indirectly cited cases to the inspectors. The inspectors were representatives from the field division office. Mr. Laughlin for instance representing the Government and he gave these inspectors the names of the various witnesses that he thought would make good witnesses. He did not give him twenty names, but could have done so, he told him regarding Mr. Ray and he should judge he gave him half a dozen names. He did not take written statements from these witnesses himself, but just turned them over to the inspectors who took their statements. He does not think he gave a written statement to Mr. Townsend himself.

Whereupon witness testified:

Q. Well, you have kept in pretty close touch with

Mr. Townsend and his assistants since 1907, when he first came out here?

A. I have been very much interested, yes, sir.

Q. You have kind of had it in for the company, haven't you?

A. No, sir.

Q. You had no feeling of any kind?

A. No, sir.

Q. You felt kind of good after the company—after you had won these cases and the company got the land?

A. I felt that if there had been any justice done me, and done the people at large—

Q. Well, you started in to get even, didn't you, Mr. Beeman—just to be right square about it?

A. I was not prompted by any such motives, no, sir.

Q. You couldn't feel very good if you thought you had been wronged by the company in these mineral contests, could you?

A. Well, there was nothing vindictive in my attitude.

Q. No, if you are hit on one cheek you are willing to turn the other—I know that; but you didn't feel very kindly towards the railroad officials and the company after you had won the contests and then the company finally got the land, did you?

A. I didn't think that I had had a strictly square

deal.

Q. Well, naturally you wouldn't feel very good about it, would you?

A. I haven't anything personal about it, I wouldn't see them wronged, if I could help it.

Q. But still you have been pretty active since this agitation for the forfeiture of this grant, haven't you?

A. As a citizen of the state, I have, yes, sir."

Whereupon, on re-direct examination, witness testified that he had been living at Gold Hill all this time. He has referred to a large amount of Government lands in Josephine County, but over half of the County is in the reserve, Siskiyou Forest Reserve is one of the recent reserves and was created somewhere in the year 1907. Mr. Loughlin called upon him about three months ago. He came to Gold Hill and he introduced him to some people whose names he had already on his list. Some of the names, the people were here as witnesses. He does not know whether it is a fact that subpoenaes were issued for all of them and some of them were not found by the marshal. Mr. Townsend has talked with him several times about this case since he has come here as a witness and before. In his talk with Mr. Townsend, Mr. Townsend said that he had heard of instances where the Railroad Company had by its deputies ordered settlers off the land and witness investigated and tried to ascertain whether or not there were instances where the company had done so, and Mr. Gingrass went upon the lands, witness knew that Gingrass intended to do that

so witness took witnesses, filed affidavits with the Railroad Company, he being one of the affiants, that were cutting timber, intending to hold and work the claim, and locate a permanent home thereon; that they had built a house, constructed a well, irrigating ditches, corrals and fences, and that Mr. Gingrass tendered $2.50 an acre. Witness has the letters where the Railroad Company refused and sent back this tender, but did not order the man off the land, simply said that his offer was necessarily declined. He did not find that the Company had ordered him off the land. He found no instance where the Company had ordered the settlers off the land. He has never been in the employ of the Government and never received a cent compensation from the Government. His mileage and per diem as a witness here at this time will be the first money he has ever received in the whole matter. He is under subpoena as a witness on behalf of the United States.

Whereupon witness testified:

"Q. Now, Mr. Beeman, upon the question of your feeling toward the railroad company, and without asking you for the details of the matter, I will ask you if you are not at this time co-operating with the railroad company in certain litigation relating to the taxation of property situated in Gold Hill? I ask you that leading question in that form, because it is just the ultimate fact that I care for rather than the details of it.

A. Yes, sir, I am."

Whereupon, on re-cross examination, witness testi-

fied that there is an attempt on the part of certain people of Gold Hill to pave a lot of streets down there and he is co-operating with the Company and other property owners in respect to that matter. This is a recent matter, within the last thirty days.

Whereupon, on re-direct examination, witness testified:

Q. Mr. Beeman here is one question that I want you to make clear. I asked you as to the percentage of these lands that you thought could be cultivated after being cleared, and if I remember correctly, you said approximately fifty per cent; and I then asked you what percentage of the quarter sections could be used for the purpose of settlement and cultivation, and my recollection is that you said fifty per cent. Now, in the latter answer I want to know whether you mean fifty per cent of the area of the quarter sections or fifty per cent of the quarter sections themselves?"

A. My understanding of the question was that I answered fifty per cent of the area.

Q. Well, what percentage of the quarter sections in that part of Jackson county and Josephine county covered by your testimony do you think contains enough tillable land or agricultural or horticultural land to support a settler and his family?

A. I think it would run upwards of seventy-five per cent of the quarter sections.

Q. You directed my attention during the noon recess to one instance illustrating the value of these lands

for agricultural and horticultural purpose. I don't recollect the details, but please explain it to the court.

A. The lands that are now held by the railroad company that I believe have a market value upwards to $400 per acre.

Q. Upon what do you base that view?

A. The adjoining land sold, four and a fraction acres for $2800, which I believe as a purchase price; I do know that the owners refused $2200 for the tract, and it sold for, I believe, $2800.

Mr. Fenton: How much in the tract?

A. Four and a fraction acres.

Whereupon witness testified, that adjoining that land is lot 5, section 21, township 36 south, range 3 west. He does not mean, of course, that all of the railroad land is of that value. That is a tract of eighteen acres in lot 5, eighteen and a fraction acres, he believes. That tract is well adapted to the raising of vegetables. The Germans on the adjoining tract raise very fine vegetables on the adjoining lands and it is exactly the same character of land, as those he spoke of.

Whereupon, on cross-examination, witness testified that this lot 5, section 21, township 36 south, range 3 west, containing eighteen acres lies half a mile west from Gold Hill, he should judge within half a mile of the city of Gold Hill on the banks of the Rogue River. It is gravel soil. He would not call it Rogue River bottom land. It is on the banks of the river, but it is on gravel

soil, the subsoil is rocks down, wash gravel, the gravel does not give it its value, it is very productive though. This eighteen acres is not occupied by any one. It is claimed to have been owned by a client of his who paid taxes on it for a number of years. This man thought he owned the land and claims to own it now. There is a fence around it, and he has claimed to own it for a number of years under the statute of limitations and he is paying taxes on it. It is not under cultivation. This man is Edwin Crews and his postoffice is Medford, he bought this land from his predecessors in interest, meaning his predecessors in interest were granted this land in 1884 by the Government. W. S. Fitzgerald transferred it to various people and it passed into the hands of Mr. Crews who thought he had a good title to it until after he had purchased. This is lot 5. Crews bought it from the successors of Fitzgerald. The Railroad Company claims adverse title to him. Crews claims to own it, he believes, by purchase. The patent has gone to the Railroad Company he has learned, since his purchase, on investigation that the patent has been issued to the Railroad Company. The date of the patent was some time in 1897 he believes. Crews has been in possession of it, he or his predecessors, ever since 1884, and they thought and believed they had a good title and witness believes that they have a claim there whether they can make it or not. Witness would not call it a good title, but thinks it is worth $400 an acre and they have done nothing on the land, have not cleared it or anything. He believes Mr. Messner, the immediate predecessor, has

been paying taxes on it for five years and how long before that he does not know, the abstract shows the taxes are all paid on the land by these various people since 1884, it also shows that the Railroad Company has been paying taxes on the same tract, and the County has been getting taxes twice.

Whereupon witness testified:

"Q. Well, you speak of that to counsel for the government, not to illustrate the value of this grant that is unsold, but I suppose just to show what a valuable piece of land this fellow has got that he claims to have gotten away from the railroad?

A. There are similar instances where I regard the lands of a very high value comparing them with prices of adjoining lands."

Whereupon witness testified that that tract came under his particular notice. He thought there might be like cases, he does not know of them though. He did not volunteer that to counsel for the Government since he was on the stand this morning. He spoke to Mr. Townsend some time ago and had forgotten it.

Whereupon, on re-direct examination, witness testified that the abstract of title furnished the predecessor of this land showed that it belonged to Mr. W. S. Fitzgerald; that a patent was issued to him for the land and it does not show that there was any patent issued to the Railroad Company for the land. It is a case where the Government has issued two patents for the same piece of land, one to the settler and then subsequently to the

Railroad Company covering the same piece of land. It was granted to W. S. Fitzgerald by patent specifically describing this land, lot 5, 18 acres, and acreage and everything tallies. The abstract was furnished by a regular abstract firm and he has had the abstract for his work and he has it in his possession. He believes it was a homestead patent prior to the railroad patent for this particular tract.

Whereupon GEORGE W. KEARNS, called as a witness on behalf of complainant being duly sworn testified, that he lives at Grants Pass, Josephine County, Oregon, and has lived there about ten years and has been engaged in the timber business there, and before he moved to Grants Pass he lived at Wolf Creek in township 33 south, range 6 west, in Josephine County, Oregon, and has lived in Oregon all of his life. He was born in Linn County and the greater part of his time he has been in Oregon but was associated with Sisson, Crocker and Company for about three years in California. He helped to build the Oregon and California Railroad from Roseburg through to what is known as old Fort Lane, that was when the road was started from Roseburg in the spring of 1881. He was foreman on construction work. He knows the country in the southern part of Oregon along the railroad and is pretty well acquainted is familiar with Josephine, Jackson and Douglas Counties and best acquainted as to detailed portions of the country in Josephine County. He has been engaged in the timber business for the last ten years handling timber lands, nothing only timber lands and

homesteads. He understands cruising and has done some of it, mostly all for himself, once in awhile but not often he does work for other people. He has become acquainted with the lands in Josephine County by being over these lands, locating them, cruising them and has been in most of the townships in the eastern part of the country where the railroad lands involved in this suit are situated. He is pretty familiar with the industrial history of that county. There are different soils in Josephine County. They have the granite soil, the red soil and that black river or alluvial soil and some of the lands are steep and rough and some of them are not. He knows where the Siskiyou Forest Reserve is, in Josephine County. He has a little County map that takes in about everything. He has worked in most every township in Josephine County outside of the Forest Reserve. There are about three classifications of soil there, granite soil, red shot soil and river black alluvial soil. He would think that part of the county would be about one-third each, as to these soils, he thinks that would probably be fair, along all the rivers there, the Illinois River and the Applegate River and the Rogue River and the other lands, he thinks would average pretty close of one-third each in regard to the classifications of those soils. The Applegate river soil will raise melons, grain, alfalfa, fruit and vegetables of all kinds. The red soil is good fruit land, good alfalfa land, good grape land, everything like that, if one has water. It must be or should be irrigated. Those granite lands, what are called granite lands, have soil in them, but they are demonstrating

beyond any question of doubt that they are superior fruit lands to the low lands. In section 12 in township 36 south, range 6 west, he believes there is a man who owns the southwest quarter of that section by the name of Skinner who has a homestead there, who has raised the finest apples and tokay grapes, strawberries and everything without irrigation, also peaches. In the southwestern part of section 12, the southwest quarter, that man there has the nicest fruit grown in the valley. They use them for demonstration there to show what the valley will grow, or what this granite land will grow. There is railroad land involved in this suit near that land referred to, used for purposes of illustration, there is section 11, which is all good land. Sections 1 and 3, each, is good land, he thinks one will find these sections still intact, owned by the railroad people. He thinks this map would show that there are some of these lands that have been sold in the grant there, the maps in evidence show for themselves what railroad lands are in the vicinity of the lands of which he has been speaking. They have been experimenting with these so-called granite lands with reference to growing agricultural or horticultural crops for a number of years. These orchards are bearing with which they are now demonstrating. This grantite land grows the best of grapes. When he says granite land he means there is some soil with it, granite land is a mixture of clay of some kind, but to look at it, it looks perfectly white, granite in it, but there is soil in it. The granite itself is very hard, some of it. The Company has a big granite quarry where it takes out all the

granite for all its depots and everything like that, right where it is marked "Granite," in section 12, the same section he is telling about now. This granite, some of it, he thinks is in section 12, there is quite a lot of it that is in that section. This on these places of which he is speaking is decomposed granite, but that granite there, they have to shoot it, blast it, it is hard enough for good building stone and everything like that. The land that he has referred to by way of illustration is near the place where the Railroad Company is taking out this granite for its depot walks, etc. The three characters of soil in the territory with which he is acquainted in the vicinity and of the same general character of these railroad lands, as he explained granite soil is on the high ridges, the red soil on the low benches and the river soils generally in flats. All these soils will produce sufficient agricultural or horticultural crops to maintain a settler and his family on 160 acres of that land. The land in this part of the country, where the railroad lands are situated are all of that character. Of course there are some spots that have rock, but he would say that there was ninety per cent of it of that character of soils, and fifty per cent of the quarter sections there would be of such a character that if properly used, could be made homes of and support a settler and his family. There are instances where a quarter section would support more than one family and where a settler would not need a whole quarter. This is not theoretical in his judgment but he has seen it demonstrated there.

Whereupon witness testified:

Q. I will ask you whether, in your judgment, if these lands should be disposed of to settlers, they would become settled up and occupied by settlers, cultivating the land and maintaining themselves and their families, and making homes of the lands?

A. Yes, sir, I think they would.

Q. I will ask you then, whether, in your judgment, the policy that has been pursued by the Railroad Company with reference to the disposition of those lands, has retarded or promoted the development and settlement of that county?

A. I think it has retarded it.

Q. To what extent?

A. Well, to quite a great extent.

Q. Now, has that effect been limited to the railroad lands themselves, or has it also affected the development of the intervening sections?

A. Yes, it has the intervening, as well as the railroad lands.

Q. Do you know whether that situation is actually met with by the people of Grants Pass in their efforts to develop that country?

A. Yes, they are all very anxious for those lands.

Whereupon witness testified, that there have been people coming in there looking for lands to quite a considerable extent. They have calls all the time for homesteads, cheap lands. The Government lands are prin-

cipally all taken. There is some timber in Josephine County. The good merchantable saw timber would be in township 35 south, range 4 west, and in 5 west there is some timber, also township 34, 5 west there is some very good timber. The balance of the county has some timber, but not very much. In the western part of Josephine County, there is not very much timber. The Forest Reserve has most all the timber, and has covered nearly all the timber west of him there. The biggest part of the land about which he has testified would have to be cleared, it is good soil after it is cleared. In a number of instances there are places where they could get five or ten acres on the 160 acres that would be very light clearing, if any. In between most of these little creeks, there are creeks all through there, take township 36 south, range 5 west, and between all those streams there are hills and ridges. All those ridges are good soil and are covered with scattering timber, some of them are very steep, but at the same time they grow grapes on these lands where they are so steep that when they haul them off the hills, the sled runs onto the horses. They use a sled instead of a wagon because of the steepness of the ground.

Whereupon witness testified:

"Mr. Fenton: A man could fall out of his dooryard there?

A. Pretty near, yes, sir, some of it in places."

Whereupon witness testified that he would say as a whole in this general vicinity he has referred to that there

would be twenty-five per cent of this rough land that would be tillable, that could be plowed. All these bottom lands could be plowed and he would think, but that is merely a guess, that there was fifty per cent of that bottom land that is not entirely flat, but comparatively level, which could be farmed, for instance the Illinois valley, the Applegate valley, Deer Creek valley and Sucker Creek valley, all of those valleys are comparatively level and cover from one to two townships, or maybe more. The country all around Kerby, Althouse and Holland is comparatively a level country, referring now to townships 38, 39 and 40 south, ranges 5, 6, 7 and 8 west. He is familiar, to a considerable extent, with the lands in Jackson County, he has done a great deal of work in township 33 south, 3 west, 34 south 3 west, 40 south, 2 west, 41 south, 3 and 4 west. There are railroad lands in these townships, odd sections, and these lands he considered timber lands; however, there is a lot of good soil in these lands, he would say that there is quite a per cent of these lands that would, after the timber was off, make good homes. All these bottom lands in Josephine County, to which he has referred are all in farming lands, mostly in fruits of all kinds. A great many of these bench lands and hill lands in Josephine County raise most everything, alfalfa and fruits of all kinds and vegetables of all kinds and he thinks he could, if desired, point to specific tracts of land in that county, as well as give general testimony with reference to it. Some of the even sections adjoining the railroad lands involved in this suit are used for agricultural and horticultural pur-

poses and are of the same character as the railroad lands and the same use could be made of the railroad land. The altitude of Grants Pass is 960 feet. There are some points in Josephine County where the altitude would run up to 3000 feet, possibly more. The hills and mountains there are all gradual slopes and he has known of instances where these hillsides have been used for agricultural or horticultural purposes. The lands he has explained in section 12, as above stated, are very steep lands, he would say the highest point on these lands would be 1200 to 1300 feet high. He has heard the testimony of Mr. Beeman with reference to the lands over in Jackson County and is familiar with some of the territory referred to in his testimony and he agrees with Mr. Beeman in so far as he is familiar with them. He thinks that is all the information he can give with reference to the character of the land there with which he is familiar, or that will throw any light upon the question whether the land could be used for the purpose of settlement and development. The soil is all right in most of these lands, only where the very heaviest timber is, and even at that there is good soil in them. In township 34 south, range 5 west, while it has quite an elevation, it has good soil and will produce, when the timber is cleared off. Timber grows there on the granite soil. The heaviest timber grows in Josephine County on what is called gray or red shot soil, red lands. There is a little milling or logging operation going on in Josephine County, but not to any great extent. He thinks Mr. Spaulding is the biggest operator

there now. He is over in what is known as the Sweet Basin country. In section 11, township 37 south, range 6 west, there is part of that that is sold by the Railroad Company that is the very best of land and the people who own it hold that land at about $150.00 an acre, that is a fair and reasonable price, he thinks it is a very good price, but that it is worth that; of course it is improved and all that and the land is cleared and under cultivation and his general description is a fair representation of it, as a whole, he thinks. He considered these lands in the several townships in detail, including these railroad lands, at the request of the Government, he had a map of the Railroad Company which shows the railroad lands and also what is purported to have been sold off, whether it is correct, he does not know, the map is the same as these maps in evidence in this case, it is the lower section which includes Josephine County, covering ten townships, from 31 to 41.

Whereupon, on cross examination, witness testified that he is fifty-five years old and was foreman on construction of the road from Roseburg to old Fort Lane from 1881 to 1883. Old Fort Lane is above Gold Hill in the edge of the valley at the same station that is called Tolo, about three or four miles north of Central Point and three or four miles south of Gold Hill. He was engaged in this construction work between Roseburg and this point a little more than two years. He worked through the Cow Creek canyon, which was a very rough piece of construction, and in his judgment, as a railroad construction foreman, he would say that the Cow Creek

Canyon compared with the most difficult pieces of railroad construction in the west. The country on either side of the Cow Creek Canyon is right in a canyon, these mountains run up pretty high on each side there and they were then covered with timber. Since that time a good deal of the timber, close to the railroad, has been cut off for lumber or fuel for the railroad,—some of it but not all of it. There is not very much good saw timber close to the railroad between Tolo and Roseburg now. The valley that they went through with the railroad settled when they got there in 1881. He would think that, as a dealer in real estate, and a man familiar with the location of these bottom lands along the Rogue River and these other streams, that most of that land was taken under the donation land law, or under the homestead prior to the time the railroad grant took effect. All he knows about the amount of level or clear land in the valley or in the county being appropriated by homestead or donation claims prior to the vesting of the grant, is that when they got to Grants Pass and in going up the Rogue River, when they struck the Rogue River, these level lands were all owned, title had been taken from the United States and they were all owned at that time. Grants Pass, so they claim, was named for General Grant. There is not very much of a pass there, they went over the old stage road but it does not appear to him to be very much of a pass. He recalls that from Roseburg south over the old stage road through the Cow Creek Canyon, a stage was maintained from Roseburg to Redding in those early days, and that

they used the Concord coach and drove all day and all night and it took about two days and nights continuous driving to go from Roseburg to Ashland. He got in the stage once at Rock Point and he thinks he got on at three or four o'clock in the afternoon and they got to Roseburg the next day about the same time, a distance of about seventy-five miles. That road had been maintained as a stage road from the days of the discovery of gold in California until the time the railroad was built. He had the pleasure of riding the last stage that came over the Siskiyous. He does not know whether there is nine billion feet of timber estimated to be merchantable saw timber in Josephine County; he does not believe there is, that is drawing it a little strong. They have a lot of good timber in that country. The Sugar Pine Door and Lumber Company operated around Grants Pass and took a lot of that timber within a radius of about six miles of Grants Pass and maintained an establishment there and employed several hundred men for several years, until they got the timber practically all away within a distance of six or seven miles of the track mostly. After that, they hauled logs, skidded them in from west of Grants Pass, some five or six miles, but they did not haul logs into Grants Pass, they had little sawmills out there. He does not think there are twenty sawmills in Josephine County now all together. He only knows personally of two or three mills that are operating there in Josephine County.

"Q. Now, isn't it true, Mr. Kearns, that there is a lot of this land that you say could be cultivated, or made

tillable if the timber was removed, that is very steep, and a man could hardly drive his team or could'nt plow it up without he had a side hill plow?

A. Well, there is some of those lands in that condition, but however, they are doing it." They just turn their moldboard and go back, with a side hill plow they have, they can switch over and turn and go right back with a side hill plow. He has been at Grants Pass about ten years, engaged in the timber business and locating people in quarters of timber under the timber and stone act and in Josephine County he would not say that he had located, within the ten years under the timber and stone act, more than fifty or seventy-five persons. He charged a location fee. He would make an estimate of the land himself, had sufficient knowledge of cruising to be able to make a practical estimate upon which a man could safely buy. A fair marketable claim would carry two million feet. He has located quite a number of homesteads that had timber on but not good merchantable timber. There is scrub timber.

Whereupon witness testified:

Q. In going through looking for these timber claims, have you ever noticed a number of timber quarters that had been entered under the Homestead Act by single men, where the improvements had been abandoned after the title had been obtained, and where the title had been transferred to some of these timber holdings or investors? Have you noticed that in your observation in going through these timber regions?

A. I have noticed a great many cabins that has been abandoned, but that was in townships where it was unsurveyed, and it was squatters. But you take it in where the lands was Government lands, where they could get their filing on them, and prove up on them, I don't know of very many of them.

Q. Well, wasn't it quite a practice, and hasn't it been until the prosecution of the land fraud cases in Oregon about six or seven years ago, for people in the towns, to exercise their homestead rights on these timber-lands, and make an effort to comply technically with the Homestead Law, and then commute at the end of 14 months, and pay the $2.50 an acre?

A. Oh, I know of a few cases, but there are not but very few cases like that.

Q. Never saw many since the prosecution of these land fraud cases?

A. Not so many before that. It is a pretty hard matter for a man to go out onto one of these pieces of land that is timber, you know, and try to prove up on it as a homestead.

Q. Well, they did do it in some instances, didn't they?

A. Oh, they have done it.

Q. Now, you say there are no vacant lands in Josephine County now?

A. Oh, there is some, I guess.

Q. I mean Government land.

A. There is some, I guess, yes.

Q. What is the reason that is not all taken? What is the trouble with it?

A. Most all the lands, however, in Josephine County that I know anything about personally had some kind of a filing, or tied up some way that it is not free to go and locate it.

Q. The Forest Service—I mean the Forest Reserve policy of this administration and the preceding administration has enclosed about one-third of Josephine County?

A. Oh, yes, can see here what it has taken.

Q. Has enclosed about one-third of Josephine County within the limits of a forest reserve. That is true, isn't it?

A. Yes, that is true.

Whereupon witness testified, that he thinks the population of Josephine County the last census was about eighteen or nineteen thousand, but he does not know the population of Grants Pass at that census but in his judgment it would have been about five thousand people. Grants Pass is the county seat of Josephine County which was created out of Jackson County, but he does not know when, but it was done, he thinks, before they built the railroad.

Whereupon witness testified:

Q. What, in your judgment, is the fair market value of all of the unsold railroad lands in Josephine

County? Just take that you know, now, what, in your judgment, is the fair market value of all these unsold railroad lands, supposing they could be sold in quantities of 160 acres, or not to exceed that?

A. Well, that, of course, would be owing to what a man would want them for. That would be only a guess on my part.

Q. What would be your guess?

A. Well, I would guess that those lands—

Q. Take them on an average now?

A. Take them on an average they are worth $10 an acre.

Q. What in your judgment, would be the value of the best timbered lands that the company owns in that county, unsold, per quarter section?

A. Well, that is including the land?

Q. Yes, including the land and timber and everything there is connected with it, per quarter section?

A. The best timber-land would be worth $5,000 or $6,000 for a quarter section.

Whereupon witness testified that he did not participate in locating people under this Act of April 10, 1869, on these railroad quarters. There was a good deal of that done in that County and several hundred people sent hundreds of dollars but he never placed one of them yet, but he knows that that was done. He got all prices for locating people on a timbered quarter and generally got

all he could, he has got as high as $600 and $700 a quarter section from timber investors, this was good timber and it was not in Josephine County but in Jackson County, township 33, 3 west, a man by the name of J. H. McDonald of Port Huron, Mich., paid him that. McDonald got hold of 160 acres under the timber and stone act four or five years ago. When he was working on the railroad from Roseburg to Old Fort Lane, between Gold Hill and Tolo these lands through there were not considered worth very much, he understood that those lands right around Tolo there could be bought for about $15.00 or $20.00 an acre at that time, that was out in the valley, and the hill lands around Grants Pass were all vacant Government land at that time and there was then no market for them. The first timber inquiry began in Josephine County and Jackson County about eight or nine years ago, when it became a matter of commercial and merchantable transaction and became pretty active. He has been in the timber business, timber locator, for about ten years and he thinks that was about the time the timber inquiry began and he has continued in that business ever since. It is quiet now simply because there is nothing for them to take. Most of the people who have timber want to sell and he does not consider the prices very high. He has a lot of timber lands now for sale at different prices, ranging all the way from $15 to $30 an acre, which is about the ruling price at this time, these lands are situated in all parts of Josephine and Jackson Counties, he has quite a lot of these lands for sale, one tract of 20,000 acres owned by different people

situated in Douglas County, simply got it in shape for selling and he is trying to sell it to a large concern that can afford to buy it. The price is $1.00 a thousand stumpage. That 20,000 acres it is estimated will cut 50,000 to the acre, which would make about $50 an acre or about a million dollars. He has had it on his books about two or three months and thinks he has a prospect of making a sale. That land is situated in Douglas County on the Smith River, quite a ways, about fifteen miles from the railroad. That goes into something over fifteen miles before one commences to get into the timber and then the timber goes right along down the river. It is quite a ways from Eugene. Smith River is a tributary of the Umpqua and goes into the north side of the Umpqua. About twenty-five per cent of these rough lands about which he had spoken he thought could be made tillable and he would class as rough lands about twenty-five per cent of the total unsold railroad lands and of that he thinks twenty-five per cent could be tilled, after the timber was removed. He thinks take the whole grant over, that about fifty per cent of the quarters could be occupied by settlers so as to enable them to make a living on a quarter section. They could make a good living if they could get five or ten acres. If a man started in broke on there, he would do like they did in the early days in Oregon, the facilities for making a living now-a-days are different from what they were then, he could put up a tent, if he could not build a house, and he could get in a little garden and he could work around and make it. They could work out for the

first year or two and get money to support their families; it would not cost a man like it does, it would be a pretty hard matter, he could devote himself to the stock business too after he got started.

Whereupon witness testified :

Q. Now, isn't it true that most of these people that have gone out and settled on these even quarters, quarters in the even sections have three or four acres in garden and truck, and a few hogs, a few cows, and worked out part of the time, and then they get stock, and let the stock range out over the unenclosed lands, and in that way they get along until they can make final proof and get title to their lands? Isn't that about the way they do?

A. Well, some of them does that way, but my experience with the most of these homesteaders is now, that the first thing they do is to clean up a little piece of ground, and get in strawberries, and get in a good garden, potatoes and such as that, and then, if they are any ways close to towns, they can haul their wood into town. Wood is worth something, you know. They cut wood.

Q. Well, the towns are not very numerous except on the railroad, are they?

A. Oh, no, only the lands that is tributary to the railroad.

Whereupon witness testified, that there are practically no towns off the railroad there, but just post

offices. These homestead ranchers sold strawberries. This man on Section 12, sells a lot of strawberries, and is right close to Grants Pass and has a market. They are not all situated within four or five miles of Grants Pass, but they have it now so that they have auto trucks that go out there thirty miles and bring in that stuff, garden stuff and apples. They go as far as Kerby and up on Williams Creek and get garden truck and bring in everything and ship it to Portland. They are bringing in their apples now with auto trucks, they bring in about five tons from Williams Creek a load with these auto trucks. They are shipping them everywhere, they are shipping them east. It takes about eight years for an apple orchard to become a bearing orchard, he thinks, seven or eight years. A homesteader going out and putting out an apple orchard would have to wait about eight years but if he would put out a peach orchard he would not have to wait so long, from four or five years. A pear orchard would bear in seven or eight or nine years, something like that. The Yellow Newtowns or Spitzenberg is about the apple that they market in the eastern market. They claim to ship something like 25 or 30 carloads of apples annually from Grants Pass, and the bulk of them come from those bottom lands along the Rogue River and he does not know whether they ship a carload of pears from Grants Pass, he does not know how many pears are shipped. Shipments of pears of any great consequence, he thinks, are from Medford, Central Point and Ashland, and some from Eagle Point, and he thinks they ship more apples than they do from

Grants Pass, he knows that they ship a very large number from Medford and from the little stations on both sides of Medford along the railroad. He has been in attendance as a witness on behalf of complainant ten or twelve days and sometimes has been listening to the testimony of the various witnesses, he came down here ten day ago as a witness on behalf of complainant and has been in attendance on the court ever since. He has not been specially employed or solicited by the complainant to get any witnesses in this case. He was subpoenaed. He was interviewed by Mr. Schwartz, special agent of the General Land Office. He don't know that Schwartz is the regular inspector of the General Land office but supposes so. He has not had any litigation of any kind with the Railroad Company or in which it was interested.

Whereupon on re-direct examination witness testified that when he came here ten or twelve days ago, it looked to him as though there were a hundred witnesses for the Government ahead of him and those had to be called first. Very few have come since he came, most of them were here when he came.

Whereupon witness testified:

Q. Now, Mr. Kearns, with reference to the time that it would take a settler to establish an orchard on these lands, I will ask you whether the same problem does not confront a settler in the valley lands there?

A. The same thing, yes. It takes the same length of time. Only in these bench lands in these granite

lands—they are much earlier than they are in the bottom lands.

Q. Well, would the length of time that it takes to get a producing trees, either apple tree or peach tree or pear tree be any greater obstacle in the matter of settling these lands that you have been testifying about than it would as to the lands in the valley?

A. Not a bit. The same length of time. In fact, I think it would take longer.

Q. Where?

A. In the bottom, because, as I stated before, these granite lands when a peach is three and four years old on the granite lands, it produces.

Q. Well, now, how about the obstacles that confronted the early settlers in the valleys there? Did they have those same difficulties to encounter?

A. They had those same difficulties to go through that they would today.

Q. Did they have to work out until they got themselves established?

A. I suppose they did. I think the times are better now for those class of people than they were at those days.

Q. You were asked as to what a man would do who went out on some of these lands and was broke. Now, I will ask you what a man can do on any agricultural or horticultural lands in the world, if he is broke?

A. He cannot do very much. He can do the best

he can. That is about all he can do.

Q. Now, these people who have come to Grants Pass seeking lands of this character, have they come there broke, or are they people who have come prepared to buy lands and improve them?

A. Most of them have come there with—they have come there some of them with capital, capital to buy lands and improve them. Others come there with only a small amount of money. It was only four or five months ago I placed a man on a piece of land out there that only had $250. It was a relinquishment. He got the relinquishment for $250, and he has cleared up, and he must have ten or twelve acres cleared now. And he has absolutely made his living there since he has been there by doing this clearing, working for the neighbors around, and on his place, and improving it. His place today is worth—you cannot go and buy it of him. You cannot go and buy his relinquishment short of $1,000 today, and that is about four months ago—a man by the name of Wise.

Q. Now, how do the lands along the railroad through Josephine County compare with the other lands in the county?

A. The railroad lands or lands along the railroad through Josephine County, some of them is about as rough land as we have got right where the railroad run.

Q. Does the railroad follow the canyons there?

A. The railroad follows the canyons and the

river.

Q. Speaking generally, I mean.

A. Yes.

Q. Of course there are some level bottoms that the railroad passes over, I presume?

A. Oh, yes.

Whereupon on re-cross examination witness testified that the Wise homestead that he bought is in section 2, township 37 south, range 6, about six miles from Grants Pass on the south side of the Rogue River, west in the foothills. It has some timber, it is brush land, but no saw timber. It was not vacant before this man reliquished it, it was a relinquishment and had been taken for two or three years.

Whereupon THOMAS BENTON MASTERS, called as a witness on behalf of complainant being duly sworn, testified that he is fifty-one years old, resides at Portland, Oregon, at the present time, but formerly resided for eight years in Polk County, Oregon, about the central part of the county. He was superintendent of the logging camp and cruising timber while he was a resident of Polk County, he was superintendent for the Willamette Valley Lumber Company. He has lived on the coast thirty-two years and has been in Oregon twenty-five years out of that time. When he first came to Oregon he was a street car driver on the Holladay line and went from that to railroading and from railroading went into the timber. The timber business has been his business for the last twenty-six years. Referring to "De-

fendants' Exhibit 259" he points out Falls City and Black Rock and he is acquainted there. He points out the right of way from Falls City to Black Rock, he located that right of way. From the break of the hill that runs between Falls City and the Lacreole, between the break of the hill, about a quarter of a mile this side of the break, which is really abrupt right there, there is not much timber. He is acquainted with townships 8 south, 6 and 7 west and part of 7 south, 8 west. Falls City is in township 8 south, range 6 west. He is sufficiently acquainted with this section of country to know the soil conditions and the formation of the land and the suitableness of the same for agricultural purposes after the timber has been removed. He has been through that country and is familiar with township 7 south, ranges 6 and 7 west. Seventy-five per cent of that country in township 8 south, range 6 west, and the north part of township 9 south, ranges 6 and 7 west, in his opinion, would be susceptible to cultivation, after the timber is removed. He has been over township 7 south, ranges 6 and 7 west sufficiently to give him general information as to that territory and as compared with township 8 south, ranges 6 and 7 west, it would be just about the same. The north part of township 9 south, ranges 6 and 7 west, is better than township 8 south, range 7 west, better land. Where the timber is good it is just about the same, but the land is better, altogether better, more tillable land. He is acquainted with the general conditions of the southern portion of township 9 south, ranges 6 and 7 west, sufficiently to acquaint him with the general conditions there,

as compared with the other lands that he has been over and the general conditions are just about the same as they are in township 8 south, range 7 west. The township south of township 8, ranges 6 and 7 west, is better, a good deal better, that is the southern part of Polk County, that is a good deal better than township 8 south, range 7 west, but not any better than township 8, 6 west, generally. He had occasion every once in a while to go over these lands on what he would call a job of going out and cruising a piece of timber or looking for a piece of timber for the Company or someone else, and they would tell him to look over certain parts of certain sections and in that way he had a chance to get an idea of what the land was. As a timber cruiser employed in the timber he was required to make a report on the character of the soil and its suitableness for cultivation after the timber was removed.

Whereupon witness testified as follows:

Q. Now, Mr. Masters, if these lands were divided into 160-acre tracts, would this percentage that you have stated be generally carried out as to the number of acres that could be cultivated on the 160-acre tract?

A. Possibly there might be in one 160 acres that I know of, in 8-7, that there would not be 75 per cent. But in another 160 acres, there would be the whole of it in the same—well, in 8-7.

Q. Then the percentage would generally work out on the whole thing?

A. On the whole thing, yes, sir.

Whereupon, on cross-examination, witness testified that there are no mountains around Falls City or up towards Black Rock. What he means by a mountain is a place where a man could not take a horse or a mule or could not take a pack of one hundred pounds on his back or anything like that, that is, what he thinks is a mountain. Black Rock is between seven hundred and eight hundred feet above sea level, that is not what they call the coast range there, when they go out cruising, but when they go to the mountains, they go over about township 9 south, range 9 west, or over in that country. They always calculated that the mountains got higher until they got seven or eight miles beyond Black Rock as they go west, that is what they call mountains. There is not any timber to speak of south of Falls City. There is a lot of underbrush and second growth. It is wild and in brush and is not all cultivated. On the Luckiamute, west of Helmicks, all the way up for fifteen miles one goes into the mountains and is in the timber all the time, excepting what time one is not in the burn or in some little brush. Falls City by railroad is 9.45 miles from Dallas by what is called the Salem, Falls City and Western Railway. There never was but one sawmill at Falls City and that has been there fifteen years. There is a sawmill two miles west of Falls City. Falls City is incorporated. He owns property in Falls City. When he speaks of Falls City he means the corporate limits, just as one would mean if he meant in Portland. The sawmill that is operated there is known as that of the Falls City Lumber Company. The capacity of the mill for ten hours

he would say was 80,000 feet, cut into cants, not into inch boards, but into cants. There are three large timber concerns that do business at Falls City or near there. There is the Spaulding Logging Company, Charles K. Spaulding Company and there is what is known as the Dallas Logging & Lumber Company and the Great Western Lumber Company and then the Falls City Lumber Company, there are four instead of three, and these are all rather large concerns except the Great Western Lumber Company. They get their timber from the railroad, that is the Great Western Lumber Company and the Spaulding Lumber Company and the Dallas Lumber Company. He could not tell just where they got their logs or whether they own any timber land up there, he has heard that they do own timber land up there but he could not tell whether they do or not. He never knew of the Charles K. Spaulding Logging Company hauling any logs to Independence, but they are taking logs out on lands in that section up there. Charles K. Spaulding Logging Company is one of the largest logging and milling concerns in the Willamette Valley, they are not the largest, but they are one of the largest. The Booth Kelly Lumber Company is probably the largest, they are in the Willamette Valley. Up until within the last year, the Spaulding Logging Company did not take out as much timber as the Dallas Lumber Company. He has been over the unsold railroad lands in the places that he spoke of and can tell some particular sections of railroad land that he has cruised or been over. He has cruised some lands that the Oregon and

California Railroad Company owned or now owns in Polk County, and he did that for the Company about eight years ago, cruised forty acres for the Company which was in the northeast quarter of the northeast quarter of section 15, township 8 south, range 7 west. The railroad ran across one corner of it and took about one hundred feet of one corner off of that. He does not know that the Salem, Falls City and Western wanted to get a right of way across that forty but he knows that he cruised it, that Company got the right of way across that forty. It is his recollection that he found there was on that forty about 400,000 feet, that is a better forty than the average of that railroad land in there, it is not an average, but it is better than some of it. If it had been as good as some of it, Hirschberg would have had it. It is not an average forty that he cruised of timber lands that he knows there belonging to the Company, it is worse than the average and he thinks that the lands of the Company there would go a lot better than two million feet to the quarter of saw timber. He does not know all the lands that the Company has not sold, he only knows a little land that they had not sold at that time, that is that was supposed to have been sold, they would not average as much per quarter section as two million and a half, that is, not such as he knows. He knows of the unsold lands of the Company about six or eight quarter sections that is, of lands that are not sold, that is, he knows positively. He does not know whether the other lands are sold or unsold, but those that he is speaking about he knows are unsold, six, seven or eight quarter

sections that he knows are unsold would average very little timber per quarter section. They would not average a million to the quarter section, they have not been cut over, they have been burned, they would not average a million to the quarter. He has never cruised them and could not say what they would average, he would have to guess at that, this one particular forty that he did cruise. There was no use of cruising those because there was nothing to take off. His knowledge of the rest of the land there that belongs to the Company is just going through the country like a timber man would. He thinks that about seventy-five per cent on an average could be cultivated, after the timber was cleared and the stumps taken out, it would not be too steep. It would be better than land about Derry and Dallas but it would not be level, it would be better. Derry and Dallas are too flat, that is too flat around Derry and Dallas for fruit.

"Q. You don't want the court to understand that this land that is lying back there in the foothills is better than the land in the Willamette Valley and ought to have been settled years ago, do you?

A. Yes, sir.

Q. Then you have got the notion that the lands that are back in the foothills, covered with fir timber, however rough it might be, are better than the old Willamette Valley lands.

A. Yes, sir.

Q. I see. Well then why didn't the people go in

there and take up the even sections fifty years ago? Why didn't they do that?

A. They didn't have no way of clearing those trees off them."

It is only recent years that they have gone in there to settle at all. He could not say that a good many have settled and taken homesteads in that timber country, have proved up and sold their timber claims to the Charles K. Spaulding Logging Company and other people, but he guesses that some of them have done that, but he does not know of any who have sold to the Charles K. Spaulding Logging Company. He does not know a man that sold any of them. They all sold before he got there.

Whereupon witness further testified:

Q. Well, you have gone out there and looked them over. You are a timber man, and cruiser, and dealt in timber quarters. Didn't you find quarters there that people were applying for and wanting to buy, timber investors, and didn't you sell some of them?

A. The timber is mostly all, when I went there eight years ago bought by three different parties.

Q. Who were these three different parties?

A. Spaulding Logging Company and Joe Hirschberg and the Willamette Valley Lumber Company.

Q. How many acres did Joe Hirschberg get hold of by one way or another?

A. I heard 19,000, but I never knew how many. That is what I heard.

Whereupon witness testified that he did not say that Hirschberg got the best timber, but would say that he got his money's worth. The other people that bought there, the Spaulding Logging Company, he does not know how much the Spaulding Logging Company owns, or how much the Willamette Valley Lumber Company owns, but they are large holders of timber lands in that country. He has tried to take a quarter section of this railroad land, he thinks it was the southwest quarter in township 8 south, range 7 west, in Polk County, he did not settle on it, he did not take it, but applied to the Company to buy it under this Act of Congress and offered them $2.50 an acre, there were no printed blanks to sign. He just made his application put his money in, but they did not take his money. He made his application the latter part of June, 1907, before he applied to purchase. He knew what kind of land he was taking. He had gone out on the tract. He would judge there was about three million feet of timber on that quarter section, it is about eighteen miles from Dallas and about eight miles from Falls City, but not in the mountains. It is in township 8 south, range 7 west. He went through it, before he applied to purchase it and got a pretty good idea of how much timber there was on it before he applied. He offered to pay $2.50 an acre and he expects the timber on it, if he could get a good title to that quarter section, would be worth $1,000.00. He does not know if it is worth as much now as when he applied for it, he has

never lived on it. He lives in Portland and is running a woodyard, has a woodyard at 542 First street and has been in that business six months. Before he came to Portland he was living at Black Rock running a general merchandise store, and had been in the mercantile business at Black Rock two years. He did not apply to the Company to purchase this timber land while he was a merchant at Black Rock. Before he was in the mercantile business at Black Rock he was running a logging camp, superintendent for the Willamette Valley Lumber Company, and that was the time when he applied to purchase the land. Black Rock is just a postoffice—those logging camps, two or three little stores there mainly for the loggers.

Whereupon, on re-direct examination, witness testified that all of the best sections of the railroad lands there have been sold, and that was the reason he said that the ones that were unsold did not amount to very much, that there was not a million feet on them, he did not think. He knows there was not in fact.

Whereupon J. N. SWITZER, called as a witness on behalf of complainant being duly sworn testified that he is forty-seven years old and resides at Willamina, Yamhill County, Oregon, and has lived in Yamhill County forty-six years and one year in Washington County. He was born and raised in Yamhill County. His father was a farmer, and never had a very large farm, but owned at one time 320 acres close to Sheridan, which he sold, he was buying and selling, changing around, different times, never stayed in one place very

long on one farm until he got up in the mountains there and homesteaded. His father homesteaded in section 10, township 5 south, range 7 west and lived on his homestead about fifteen years. It was burnt over land, all dead timber when he entered it. His father cleared up about 18 acres of the 160, and there has been more of it cleared since, it had been pretty heavy timber one time in the early days, there had been forest fires which killed all the timber, a good deal of it was rotten. His father raised hay, vegetables, never threshed any grain there, always fed it out to the stock. The hay includes wheat, oats, vetch, they did not raise vetch then because they did not have it, they had wheat hay, oats hay and timothy, and raised all kinds of vegetables, carrots, parsnips; the soil was good soil. His father had about three acres of onion land and they raised onions on it for sale. They raised about six hundred sacks of onions there one year. He does not remember the year that his father went there, it was in 1878 he thinks, somewhere along about there that they went up into the mountains. That was the means of earning a support for himself and his family, there were seven children, this place was about twelve miles from the railroad. He has been engaged in farming pretty near all his life until the last three or four years, and has farmed there near Willamina, has farmed all his life in the Willamina Valley since he got hold of his farm and most of the time in township 5 south range 7 west. His father raised fruits on his homestead, had a few trees, not very many, never set out much of an orchard, about half an acre, but raised good fruit, the

soil was adapted to that, it was good fruit land, raised apples, pears, plums, berries. Willamina is in the valley. His father's homestead was right at the head of the valley, one might say it was out of the valley up in the edge of the mountains. He means the Willamina Valley, is up on the Coast Fork, a branch of the Willamina River. Referring to "Defendants' Exhibit 259" his homestead was right on the forks of this creek in township 5 south, range 7 west. There is very little of that land marked in green on this map that shows south and west up there, there is section 27 which is every bit of it good land, and is in township 5 south, range 7 west. There is one small part of that which shows green there, part of that has been bought years ago, the yellow part there. It does not show on there, and that marked red is railroad land that has been contracted, but the railroad company still has title to the land. He is familiar with that part there that is red. There is no waste land there on that section 27. Section 15, in township 5 south, range 7 west, is all timbered land, there is 600 acres of railroad land in that, and one forty sold out of that section 15. There is about fifty per cent, it would run near sitxy per cent of that section that could be rendered suitable for cultivation, for tillage, after the timber is removed. He has a pretty fair knowledge of the lands in township 4 south, range 7 west, and of that country and the existing conditions there. He is not very much acquainted in township 4 south, range 6 west, he has been there but has never paid much attention to it, he was over there for stock. He is acquainted with the general con-

ditions existing in that township and is acquainted with the general country in the parts which show the green markings there on the East Fork of the Willamina. That is a timbered country in there. Take the whole thing, after the timber is removed, about forty per cent of that land could be rendered suitable to cultivation. He has a general or specific knowledge of those lands marked in green, in township 5 south, range 7 west that he has not mentioned, and he would say that probably forty to fifty per cent in township 5 south, range 7 west, that he has not specifically mentioned by sections, could in his opinion be rendered suitable for farming purposes. There are people living, making homes and farming the lands similarly located in these townships, 4-7-, 5-7 west. Township 5-7 west has been settled quite a long time, most of that land, some of that land was taken under the old donation act in township 5 south, 7 west, quite a bit of that was old donation. If this land were divided into 160-acre tracts these percentages of plow land would generally hold good, in his opinion, that is, there would generally be these percentages of plow land as to each 160-acre tract.

Whereupon witness testified:

Q. Mr. Switzer, in your opinion, what has been the effect of the Railroad Company's failure to follow the conditions of the grant and sell to actual settlers at $2.50 an acre, in tracts of 160 acres in this community that you are acquainted with in Yamhill County?

A. Why, it would all be taken. It would all be sold

at that price now.

Q. To actual settlers?

A. Yes, sir, settlers would buy it now. Most of the Government land is taken in township 4 now. Nearly all the Government land is taken up, and in 5-7 it is all taken, I think. I don't think there is any Government land left there.

Whereupon witness testified that all of the Government land there has been homesteaded, all homesteaded in there in the last two years. There have been some forty odd families located in townships 4 and 5 south, range 7 west. The first settlers in the settlement of this country went on the low lands, the valleys, and open places along the streams. The more recent settlers have gone on the hills, the land is rolling, all of it mountain land, a good deal of level land on it, nearly all of those more recent settlers there have a little piece of bottom land on some of those creeks and streams, these townships are well watered, every forty has water on it, in either township, he thinks. He does not think there is a forty but what there is water on it, springs, there might be a forty too, but one could not take an eighty without getting a spring on it.

Whereupon on cross examination witness testified that his father's first name was A. J. Switzer, and he took a homestead and lived at one time over on Red Prairie in Polk County and on Mill Creek and had a place over there, it was about four or five miles from the

county line where he lived, he does not know what donation place it was, but it was a donation land claim and he was living there in 1868, 1869 and 1870, along there, he does not remember when he lived there. His father left there and went over to Washington County, they were there a year and then they came back and lived right south of Sheridan for a year and then went into the mountains. When they lived south of Sheridan they lived on a donation claim, Johnson owned the place at the time they lived on it, it was south of the Scroggins place, right up on Red Prairie there. He does not remember when they went up on the upper Willamina and his father took this homestead, but he thinks it was somewhere around 1878. At the time his father went up there he was the last settler on the creek. There was another man who went in the same time he did, a fellow by the name of Burton. At the time his father took that land he took the first place that was not taken up that creek, a man by the name of James lived there below, and it was four or five miles up the creek by the road from the donation land claim of Charley Fendell. Willamina is a place of about 500 people, at the end of the railroad that runs from Portland out to Sheridan, it goes about four and three-quarters miles from Sheridan to Willamina. The railroad has been there about five years, he thinks it was built four or five years ago by the Newberg Pressed Brick Company, it has a brick plant at Willamina, and they built that branch to ship out this stuff. Around that Willamina country is an agricultural and fruit district, and the last ten years a good many people

have come in there from Tennessee and other parts, and have settled around Willamina. There was no donation land claim adjoining his father's homestead, it is all homesteaded. His father sold to Jack DeLashmutt who lived on it. It was a stock ranch, and that is about the way his father and his family made a living on that place. They kept some cattle and hogs and their stock ran out there in the mountains, it was all open then to pasture. A good many claims have been taken, homesteads have been taken in the township north of this one in township 4 south, range 7 west in the last two years. That used to be a timbered township, but it is all burned over, there is no green timber on that township at all now, it is an old burn. It has been, he would guess fifty or sixty years since the first big burn. Every few years there would be fire come through there and burn it. There is no young fir on it to speak of, once in awhile there is some young fir. If fire had not been over that every year, there are some places where the young fir would have come back, some places where it would not. The stock keep the young fir down as much as the fire. Take that country close to Willamina, it has a heavy forest on it, it has saw timber and the reason is that nothing was ever done with it, they just let it lay idle and the timber came up on it and it is a pretty heavy forest now, all second growth fir, they are making ties of it today, it has grown, he would say just exactly, but there are trees there that have come up since he went to that country that they are sawing ties out of now, that is trees probably eighteen inches at the butt. If fires and stock had not interfered

the young fir there, in its native state would reproduce in the course of fifty or sixty years and make saw timber. This old burn has been taken the last two years, quite a good many people have gone in there and taken homesteads, they have not much clearing to do, they have the old logs and stumps to take off the land, and there is quite a bit of hazel and vine maple brush coming on this land, which has been growing, the fire kills it every few years and the stumps are in there and old roots, but the brush does not get very high except along the creek it grows very high and rank along the creek. The best timbered township in there would be township 4 south, range 6 west, he thinks, no, township 5 south 7 west, there is some timber, but not much in those two sections. There has been no timber logged off of the railroad lands and sold to the sawmills or cut down, he thinks, but there has been on the even sections, some of the even sections have been taken as homesteads and they are all cut off, sold off now on the homesteads. These people that took the homesteads in these timbered parts, did not sell the land to timber people, they cut the timber off, sold the timber there to the mill, sold the stumpage. He does not know about what a quarter section of that best timber would run in million feet. He has no knowledge of timber himself. He never cruised in his life. There is considerable good timber in sections 27 and 11 of these unsold railroad lands. Section 27, township 5 south, range 7 west is not clear land, but is good land, it is all timbered except about ten acres of prairie in it that has been plowed, the rest of it is timber, second growth

timber and some old growth, but it is good land and lays good and is all good soil, referring to the 121.20 acres of unsold lands of the Company. In section 15 there are 600 acres of unsold railroad land which is not all timber, there are some open burns in that, not very much though, it is mostly timber, there is a small burn in which the timber that is left is old growth timber, pretty good timber. The land adjoining section 15 at the present time has been selling at from $25.00 to $30.00 an acre, and the land in section 15 is worth $25.00 an acre for the timber alone. A man could afford to buy it for $2.50 an acre just for the timber.

"Q. And when you say that most of all that would be bought and settled upon at $2.50 an acre you mean that they would pay $2.50 an acre for most any of it there, and make the best use of it they could?

A. Yes, they would buy all that open land at $2.50 an acre now.

Q. Practically all the unsold railroad land in townships with which you are familiar, if put on the market at $2.50 an acre would be bought up wouldn't it?

A. Yes, would be bought up.

Q. By speculators or investors?

A. No, settlers would come in there and take it right now.

Q. I understand, but wouldn't it be a good investment for one to buy that 600 acres at $2.50 an acre?

A. Yes, it would be a good investment for any man.

Q. I could make a good investment to buy any of that land at $2.50 an acre?

A. Yes, sir.

Q. And I wouldn't have to live on it to make a good investment, would I?

A. No, sir, wouldn't have to live on it."

He is not much acquainted with township 4, 6 west. He has been over that, it is directly northwest of McMinnville and he is not acquainted with that very well. The Jones sawmill he does not think is in township 4 south, range 6 west, he thought that was further over. Fairchild is on the north fork of the North Yamhill, which is in townships 2 and 3, ranges 5, 6 and 7 west. 3 west would be immediately west of Carlton. He is not much acquainted with that at all. He lived there when he was small. He was born right there close to Carlton. McMinnville is in township 4, range 4 west, and the county line between Tillamook and Yamhill corners over west of McMinnville about ten miles. Willamina River as shown on this map has an east, middle and west fork, and Willamina River runs up into that timbered country in township 4 south, range 7 west, and the stream runs south to Willamina. Charley Fendell's donation land claim is just up the creek from Willamina in section 25, about two miles from Willamina. He notices these yellow sections all around in there on both sides of the Willamina Creek, running clear up into township 4 south, range 7 west. His father's homestead was in section 10, township 5 south, range 7 west, on a direct line about

five or six miles beyond Willamina. He was over on the Coast Fork. Not all of that country, in yellow there, is rolling foothill country, some of it, quite a bit of it is valley land. The Fendell place is all level valley land on the Willamina River, out from the river it is all rolling land. The Willamina Valley, where the Fendell place is, is a narrow valley, a narrow little valley of low lands and runs up on the hills. Sheridan is four and a half miles east of Willamina. Those foothills north and northeast of Sheridan towards McMinnville are all bald hills with quite a bit of brush and small grubs on some of them. In the early days the oak grub were not nearly as numerous and heavy as they are now, lots of that oak has grown up. He was told in that section of the country before it was broken up, that grass in the Willamette Valley and foothills there grew from a foot up to four and five feet high, but he did not notice much about that, they told him in an early day that grass was all over the valley as high as a horse's back. The fires kept everything down, the Indians kept it burned off. As soon as the whites got hold of the land, it has grown up, since pioneer days, with enclosure of the premises, and the stopping of the fires, the timber has increased and become more than there was before, excepting where it was grubbed. He thinks Yamhill county, this section, is one of the oldest settled portions of Oregon. The Grande Ronde Valley is west of Sheridan and Willamina about seven or eight miles, about seven miles to the edge of the valley. He thinks General Phil Sheridan had a fort there at Fort Sheridan in about 1860 or 1861

before the war. The old fort stood there until two years ago, when it was removed to Dayton and preserved by the people of the town as historical. The Grande Ronde Indians were put on the Grande Ronde Reservation and later on the Siletz. There was some settlement in these foothill lands prior to twenty years ago in a few scattering places on the creeks as they ran up. These foothills around Sheridan have been owned longer than twenty or twenty-five years ago, they have been settled quite awhile, they were in the country when he was there, and it was all open country. There have been no settlements in the timber back there, not away back until within the last few years. Before that there were some few ranchers on the creeks in the stock business, some up on the hills in township 4, there have been some ranchers for the last twenty-five years, they were not stock men, they kept a few head of cows, that is all, they cleared up quite a piece of land, some of them did in township 4 south, range 7 west. These railroad lands have not been much in demand until within the last ten years, there was nobody in there buying any land at that time. People come in thicker now and they want the land. Timber became the object of considerable inquiry in his section of the country eight or ten years ago, eight years ago and timber has become pretty valuable now. These 600 acres in section 15 are chiefly valuable for timber, more valuable for timber than for anything else now, but it is good agricultural land when the timber is off. It would cost quite a bit to clear it, some parts of it would cost almost as much as one could buy the cleared land for,

in some places a man could get 25 or 30 acres clear, once in awhile. To clear land would cost pretty much as much as to go and buy cleared land.

RE-DIRECT EXAMINATION.

Q. Now, Mr. Switzer, the settler who goes on the land, what method does he use in clearing the land? Does he hire it done?

A. No, he clears it himself, as a general thing. He goes on there, and he clears a little every year, what he can.

Q. Would it be possible for a man seeking a home of moderate means, to obtain any lands at $2.50 an acre that he could clear up and cultivate?

A. Oh, yes, yes.

Q. By his own labor?

A. Oh, yes.

Q. At $2.50 an acre, that he could clear up?

A. Oh, no, not clear for $2.50, no.

Q. I don't believe you understood my question, Mr. Switzer. Could a man go over into this country, and buy land at $2.50 an acre?

A. Could he go and buy it?

Q. Yes. Are there lands for sale there at $2.50 an acre?

A. No. No, there is none there for sale, no, I should say there is not.

Q. Then a man seeking a home, having small means, he could not go down in the valley and buy land, could he?

A. No, he could not buy land in the valley there very cheap.

Q. His clearing of this land, his labor in clearing this land, would be something like putting money in a saving bank?

A. Yes, something like that, yes.

Mr. Fenton: You can't very well convince an old settler of that.

A. They go in there, and they get a little place and they clear up a little every year. And in a few years they have got a home. There is one man up there that got a piece of that land, bought a piece of it one time, and sold it a few years ago, and he has been offered $100 an acre for it. He has cleared it all up, and got it in cultivation. One forty of that 160 he was offered $100 an acre for.

Q. Where was that?

A. Township 5, Range 7.

Q. Was that timbered land?

A. It was burned over land, hill land, this red shot soil.

Q. Is that the same character of soil that is found on these lands?

A. Well, it is different from valley land below, but

it is the same as the hill land all over 4 and 5. It is that kind of red shot soil, the hill land. The bottom land is kind of black loam on the creek, some sandy.

Q. You spoke about this section, its chief value being for timber. You mean in its present condition?

A. In its present condition, yes.

Q. It could not be farmed until the timber was removed?

A. Oh, no, it could not be farmed until it was cleared up. A man would soon clear up 25 or 30 acres on one part of that section that is a burn, lays nice, very. It has been burned ever since I can remember, fire went through there.

Q. Mr. Switzer, how is this land adapted for fruit raising?

A. It is good fruit land.

Q. Are the settlers in there raising, successfully raising fruit?

A. There has never been very much orchard put out there, only one upon the hills. There was one put out there 18 or 20 years ago, a small orchard. It is a fine orchard, bears the finest kind every year. It is good fruit. There has been quite a little set out in the last three or four years. There was one 20-acre orchard set out in 5-7.

Q. That has not had time to mature yet?

A. No, on the hill, right adjoining it, close to it, there is an orchard been bearing there for a number of

years.

Q. How, if at all, has the demand for lands for settlement purposes, homesteading purposes increased in this community?

A. Oh, it has increased wonderfully in the last four years, five years. They have taken everything they can get hold of, settlers are coming there, getting in there and getting on all the land, wherever they can get a forty they are taking it.

Q. Are they carrying on dairying to any extent in this country?

A. Yes, up there on the Willamina there is quite a few of them dairying.

Q. Has that industry increased in the last few years?

A. Oh, yes, sir, a few years ago there wasn't any one dairying in there.

Q. Where is your nearest creamery?

A. We all ship our cream from that country to Portland, Dallas, Corvallis—we haven't any creamery close. They run a wagon up there clear up to the head of the Willamina.

Q. That is a wagon collecting cream?

A. Yes, the Hazelwood. I used to run a wagon for the Hazelwood myself up there and collect cream, seven or eight miles above the town.

Q. That is the Hazelwood Creamery of Portland?

A. Yes, sir. They get all the cream from that country pretty near, most of it. Independence gets some, and Corvallis gets some.

Q. How are these lands adapted for dairying purposes?

A. They are all right for dairying. That is really the finest vetch there is. They are adapted to vetch. Then the wild pea-vine grows all over that country, used to.

Q. Now, this burn that you spoke of, Mr. Switzer, did that burn destroy the soil?

A. I don't think so. It seems to produce mighty well anyway.

Q. In your opinion, would these lands, if divided into 160 acre tracts, be suitable for settlement in areas of 160 acres, that is, where a man would go on with the purpose of farming and making a home of it?

A. Oh, yes, on 160 acres, a man could make a home there on 160 acres of land.

Whereupon F. J. STEWARD, called as a witness on behalf of complainant, being duly sworn testified that he is sixty years old and lives in Sheridan, Yamhill County, Oregon and has lived in Yamhill County fifty-five years and in Oregon since 1852. He was not born in Oregon, but when he came here he was a small boy. His occupation since he has been a resident of Yamhill County was that of a farmer and he has been engaged in farming on the south and west part of the county and

has farmed several different places there. There was the black, rich soil farm lands, some nice farms and some bottom land that he farmed. They were lands that were taken up in the early days, he thinks, which were used for farming purposes, that land was taken up under the donation land law. He took a homestead in township 4 south, range 7 west, it was high mountain land, situated in section 32. He has had experience in farming mountain land as well as valley land. This mountain land produces pretty nearly everything one would try to raise. There are some fruit trees and gardens. People have gardens up there, and they raise hay, grain hay. There is no threshing in there because it is an out of the way place for a threshing machine to get at. They do not raise grain to thresh, but they raise stock and fruit and garden. One might call it a farming country, the way the people live there. The land is used more for dairying purposes and raising stock. Referring to "Defendants' Exhibit 259," he is acquainted with township 3 south, range 7 west and township 4 south range 7 west, mostly acquainted with them. Township 4 south, range 7 west is on the west fork of the Willamina. They do not call that Willamina branches there, they are named by these creeks, West Fork of Willamina is called Coast Creek, that is the way they are named on their blue prints on the map there. He is better acquainted with that country by following the names of the creeks. The East Fork of the Willamina is called East Creek, that is in the green section of timber there, and on the Coast Creek country, all of that, and in through that country there is

all a burned district, has been burned off years and years ago, before he was acquainted with the country it had been burned off. There has been heavy timber all through that country, and it was burned, and the fire killed the big growth, and the timber stood there for years, until it became rotten, then it breaks and falls on the ground, that is in townships 4 and 5, range 7 west, that is the big burn, goes clear through to the coast, it goes clear back, reaches over to the coast and about forty miles wide, clear through along the Coast Range and goes clear over to Nestucca. He has been over these lands and he thinks he is acquainted with the conditions of them, the soil conditions and the growths that are on the land and the possibilities for agriculture and in this particular country that he speaks of there are thirty-five to forty per cent of that land that could be tilled. Judging by the places that are taken, claims they call them, people that have settled in there, that is in the area covered by the grant marked there in a general way, in his opinion, that this percentage would hold good as to 160 acre tracts, if divided into subdivisions. They could not perhaps take 160 acre tract and cultivate it, one could not start in and get thirty or forty per cent just in one place, in one certain piece, but one could have a field in one part of that tract of land, and on another portion of that land one could take a nice little field where people could open up and clear up the ground. That area is not heavily timbered, it is brush, it is not timber in that, most of that, some of it, in certain sections that he knows of has timber on it, but the most of it is what

they call the burned district. There are settlers in that burned area. That land has been settled there ever since the people seemed to find out that there was a place for homes there. The way that he looks at it, the people who advertised this country here up along the areas there along the coast have enticed homeseekers to come there and hunt for homes, and that has been of late years, just the last few years that they seem to know that they could go and make homes there. A good many of them are successfully farming this land, they are there, they have brought their household goods there, got pianos and all nicely fixed. Those lands were acquired by homesteaders by taking quarter sections, the settlers that are on them.

Whereupon witness testified:

Q. Mr. Steward, in your opinion, what has been the effect in this community of the Railroad Company's failure to fulfill the conditions of the grant, and sell to actual settlers in tracts of 160 acres, at $2.50 an acre?

A. I don't know as I know exactly the conditions that the Railroad Company agreed to, on this land. But there are people now that would take the land and buy the land if they could get it.

Q. Well, assuming that such a condition exists, that the Railroad Company were required to sell at $2.50 an acre, in tracts of 160 acres only, to actual settlers, people who would actually settle upon the land.

A. Yes, sir, they would.

Q. What has been the effect of the failure to fulfill those conditions in this community?

A. Well, I hear people say that if they could buy a certain quarter section of land there, they would like to buy it. That has been the talk for a good many years.

Q. For what purpose did they desire the land?

A. For homes, for a home, yes, sir, to make their home on it, and to improve it.

Q. In your opinion, if this land was opened up to sale at $2.50 an acre, only to actual settlers, would the land be taken by people who would take them up in such tracts for homes and farming purposes?

A. That is what people tell me they would do.

Whereupon on cross examination witness testified that he took his homestead, he thinks, nine years ago. He took the northwest quarter of section 32, township 4 south, range 7 west and it is about eleven miles from Willamina in an old burn. There was timber and brush and dead timber on it when he took it. There was no saw timber on it, nothing but logs. He did not live on his homestead at all one might say, he took the claim there and his wife felt that that was not a very nice place to live so he had a little house and barn put up there. A man paid him a little something for his house and barn and he relinquished his rights and never really lived on the homestead. He thinks he got $35.00 for his improvements and the man to whom he reliquished, filed

on it. His name was Cossach, a German. He did not perfect title, he lived on it, he and his son together stayed there about a year and they relinquished to a man by the name of Ryan but he does not know what they got for their relinquishment. Ryan did not prove up on it, Ryan did a little work on it and was called to Alaska and went away. It seems as though he had to go away, and a man told him a few days ago that he paid him $300.00 for his improvements. He was improving it, going ahead with it. He relinquished to somebody else under some circumstances a short time ago and that man is living on there now and has filed on it as a homestead. He does not know if he will relinquish or not. He might if he could get enough money out of it.

Q. You don't know whether he will stay on it and prove up?

A. No, I could not tell you that.

Q. It was not a very desirable quarter, then?

A. Well, not very. There was a railroad quarter down this side I would like to have got, but I thought if I could not get it, I would take the other. It was on an odd section. I don't know whether it was railroad land or not.

Q. The railroad section this side was on the market at one time, wasn't it?

A. Yes.

Q. Do you remember what the company offered it for, before 1905, about the time the change of adminis-

tration in the land grant came about?

A. No, sir, I do not.

Q. Well, anybody could have bought it 20 years ago for practically nothing, couldn't they?

A. I presume they could have got it cheaper than it could be got now.

Q. Don't you know, Mr. Steward, that a great deal of this railroad land there in the foothills and around could have been bought 25 years ago for probably $1.50 or $2.50 an acre?

A. Yes, sir.

Q. There was not any demand for it, really, was there?

A. No, sir. There was not the people here to ask for it. There was not the home-seekers.

Q. I know, but there was no settlers that wanted it?

A. Settlers had just worked back, they had taken claims along here, it was not policy to jump back on that land.

Q. I understand. What I mean is 20 years ago these railroad lands had no particular value to anybody.

A. Didn't seem as though they did, no, sir.

Q. Consequently there was nobody asking for the lands excepting a few farmers who wanted a forty adjacent to them.

A. Yes, that is it.

Q. And as the country filled up, and principally within the last five or six years, or seven years, and particularly since timber became an item, all the good timber-land in that whole country has been taken some way or other, hasn't it?

A. It has, yes.

Q. Some of it taken as homesteads, and some have taken it under the Timber and Stone Act?

A. Yes, sir.

Q. And the lands in this burn and open place are begun to be settled more or less?

A. Yes, sir.

Q. Some of them having the experience that you had, of relinquishing, and never going on?

A. Yes, sir.

Q. And others taking it, the second man relinquishing, and so on, until somebody has finally got the title to most of it?

A. Yes, sir.

The farming that he had done was chiefly down in the valley. His father's farm was about six miles, five miles southwest of McMinnville in the old settled place and was a donation land claim, the William E. Warren donation land claim and one immediately south of that was the Richard Miller donation land claim and all that country was taken up under the donation land law, 640 acres, and the foothills as they were bare and open were

taken under the homestead, and sometimes partly under the donation law. He remembers where Charley Fendell's donation land claim is. It is two miles up the creek from Willamina and he has been there a long time. His brother-in-law, N. K. Sitton, lived down near Carlton on a donation land claim too, he thinks.

Whereupon, on re-direct examination, witness testified :

Q. Mr. Steward, you spoke, or rather, Mr. Fenton spoke of the lands being on the market in the early days, and there were no takers. As a matter of fact, there were even sections open to settlement there?

A. Yes, sir, the even sections.

Q. Which a man would have to pay nothing for to the Government except filing fees of $4.00?

A. Yes, sir.

Q. Those were the lands that were taken by those first men that came in there?

A. They were the lands that were taken, yes. Under pre-emption law, there was some pre-emption claims at that time.

Q. That was prior to the Homestead Act, some of them?

A. Yes.

Whereupon witness testified that on this homestead that he took there he sold his improvements, that was all, and really received no compensation for relinquishing the claim. The man that is on the land now is clearing

it, slashing the brush off and clearing it. He has a garden on it. The railroad quarter of which he spoke that he would like to buy is in section 29, township 4 south, range 7 west, it is good land, creek bottom partly, it is quite good land. What they call Kennedy Creek comes down through there and there is quite a bottom of nice land through there, some bench land and fine grazing land, alder, ash and willow. It would just depend on how much a man cleared of this track as to how much plow land could be obtained, it has small brush stuff that could be cleared and one could plow quite a big per cent of it, it has no value for the timber that is on it and is only valuable for the agricultural uses to which it could be put. There is quite a little bottom along up through, of flat land, along up the branch flat land, they call it beaver dam land, good land for raising vegetables, anything like that, beaver dam land, as they express it, is very rich soil. One finds a piece of that land, as one goes up on the high ridges, there is high ridges, pieces of land one could not farm at all on this land, perhaps, but other portions are good land. This land adjoining Mr. Booth that belongs to the Railroad Company there, is in section 35, he does not remember how much is in that tract, it is in township 4 south, range 7 west. This railroad land in section 35 is high red soil, red shot land, good soil, if it was cleared off, the timber is rotten, the old big trees are rotting on the ground, it has a fine place for building, fine water as one ever saw, it lays out there, stock runs over it, some places it would not take anything hardly to clear it, other places it would

cost considerable to clear it. There is a big body of that tract that could be cultivated, but he does not know what it would be and it seems to him there must be fifty or seventy-five per cent of that tract there that could be cultivated and that land is worth, from an agricultural standpoint, $20.00 an acre anyway. He sold land in there in section 33, a little piece for Mr. Booth, for $20.00 an acre and it was higher and farther away than this land.

Whereupon on re-cross examination witness testified that he had not applied to purchase any of this railroad land under this act of Congress.

Q. There was a good deal of excitement after this agitation started about this Government suit, among people trying to get these quarter sections for $2.50 an acre, wasn't there?

A. Yes, sir.

Q. Not so much in your section, where the land was agricultural, as in the timbered sections?

A. No, perhaps not.

Q. You knew that that was going on as to the timbered lands in other parts of the state?

A. Yes, sir, I understood it was.

Whereupon H. S. MALONEY, called as a witness on behalf of complainant being duly sworn testified that he is sixty-three years old, resides at McMinnville, Yamhill County, Oregon, and has lived in that county since 1877. He is now county recorder of that county

and has been such since July, 1908. He has had twenty years' experience in farming and surveying in that county. He owned farming lands in Yamhill County near Sheridan, which is in the valley. He has been more or less engaged in surveying work since 1878, land surveying principally, he has done some government work. Referring to "Defendants' Exhibit 259," he had been over the upper part of all these lands north of Sheridan and Willamina, surveying, that is, in townships 4 south, ranges 5 and 6 west and has some little knowledge of township 3 south, 6 west, and also has been in 4 south, 7 west and has been all over township 5 south, range 7 west. Township 3 south, range 6 west is up in the Meadow Lake section, Jones' mill, and is principally burned over land, there is some green timber, he is not very much acquainted there. He surveyed some near Meadow Lake, which is principally burned around there, that is in the big burn which has been mentioned in the testimony of Mr. Steward and Mr. Switzer and is in the same area. There are some sections in there which have green timber, and there is some green timber in section 8, township 3 south, range 6 west. Meadow Lake is in section 15 and his knowledge of that land in township 3 south, range 6 west is rather limited with reference to agriculture. He rather thinks it is too high an altitude though to be very profitable for agriculture. He does not know just what it is, he has never taken the altitude. It is high and mountainous and he does not believe it would be successful for agricultural purposes but principally for stock rais-

ing. There are some settlements in township 3 south, range 6 west. There is one that would be in section 23, township 3 south, range 6 west. He has surveyed some in section 23, which is in a burn, but there is a shingle camp there, there are considerable shingles, and he thinks probably that was why that was taken. There was no land in cultivation when he was there and south of section 23 it is nearly all green timber. In township 4 south, ranges 6 and 7 west he is acquainted. Township 4 south range 6 west, the line runs diagonally from the northeast to the southwest corner, the southeast part of that township is principally green timber and would be considered as agricultural at least forty to fifty per cent. of it, if it was cleared. In section 15, he knows there was some railroad land that has been considered good agricultural land, but it has never been cleared, it is known as the Horse Ranch up there, it is fine grazing. Township 4 south, range 7 west, with the exception of perhaps the south tier of sections, is mountainous and principally adapted for grazing. There are settlers in that township, around there in township 4 south range 7 west, nearly all that south tier. There is a man by the name of Wade who took a homestead up in section 22, who lived on it his time and proved up, it is in a little basin in the mountains there on what they call Bible Creek. On section 21 a man by the name of Bible took up a quarter section there, which was practically all level land. He did not take it as a homestead, he bought it under the timber and stone act and the principal value at that time was the cedar timber, down logs, all fallen

timber. It was not logged off but the cedar logs are valuable for posts and shingles, that is how he got it under the timber and stone act, but there were some little beaver dams along the creek that were valuable and the altitude is lower, snow does not lay there deep. The altitude is not very high in that country, not in that basin but there is some of that which is mountainous all around it, that is too high an altitude he thinks for agricultural purposes. He does not think that he ever took the altitude in that country, but it is something like 2,000 feet though he should estimate, to the higher ridges, something like that. There is more of the high elevation in township 3 south, range 6 west, than there is of any other kind, it is mostly high. Only the lower elevations of that land are adapted for fruit raising. Bald Mountain is in section 29, which is a very high point and can be seen from all over the valley. He presumes that the land in this vicinity, at an elevation of 2,000 feet, would produce grain and similar crops, although he has never seen it. Ordinarily 2,000 feet is not an elevation that would prevent the growth of grain hay, he does not think it would prevent it, if one had soil, he thinks it would grow. The character of the soil in township 3 south, range 6 west, the higher mountains, he thinks is coarse shot land, as it is called, and there is not very heavy timber on it, it is burned over now, the timber is small. There is first growth of timber on Bald Mountain, the old logs were there twenty years ago, something like that. It has scarcely a log over a foot in diameter, showing that it never had been very

large timber on these higher mountains, but the lower levels, of course are washed from the hills and that land is pretty good soil. The growth of the timber that is on there now is second growth in this burn, there is some timber on it. It is principally fir, young fir, but it is generaly so thick that it never grows to any great size, it has grown so thick in there, it is more of an underbrush, it is not very difficult to remove, slash it off and burn it. The northern part of township 3 south, range 6 west, with which he is acquainted, is in that condition generally. The southern part has some green timber, heavy saw timber, old large fir, generally the size of the trees indicates the soil, and it is good timber. There is nothing that would prevent cultivating this land excepting the removal of the timber. These portions that are heavily timbered, take township 3 south, range 6 west, as a whole, the southern part of it, is pretty good, would be pretty good for agricultural purposes, but it is rather steep and broken. He has surveyed some in section 23, 15, 16 and 8 in township 3 south, range 6 west. He was there surveying for the Meadow Lake Club at one time, meandering or surveying their lands. Most of the lands were in the lake. Meadow Lake Club is the corporate name, it was a club house that was located there. At another time he surveyed some for a land holder in section 23 by the name of Frank Martin, he thinks. He has located a claim or two near the Bald Mountain as it is called in the south part of the township. As to settlers there on the even sections in this township, there are Williams Bros. and

a man by the name of Cobb who have taken claims in there on the burnt part of it and then the others have been taken as timber claims, the south part. The south part is timbered and he thinks the land was taken up mostly under the timber and stone act, some of it was taken as a homestead. He thinks Mr. Ivan Daniels took a homestead. These lands in township 3 south, range 6 west could be used for fruit purposes, those that are not too high an elevation he believes would be useful for fruit purposes. The elevation there would be mere guess work on his part, he is not an expert on those things, but on the top of Bald Mountain, the size of the growth of the timber where the logs are, rather indicates altitude. As a general rule, the foot hills are regarded as better land for fruit, on account of the drainage, but when one gets to the higher altitude, he does not know, he has never been engaged in the fruit business. He has a large orchard on his farm where he has lived for twenty years which was in the valley. He is acquainted with the lands in township 4 south, range 7 west, there are portions of that upon which he located settlers twenty-five years ago, in the west half of section 6 of that township on the Nestucca River, on a piece of bottom land, he presumes fifty or sixty acres of level land and it is not a very high altitude, and there were apples bearing at that time, that was in section 6 in this township a part of which was in the burn, it covers part of that burn. He is told that in the last year or two, every quarter section, in this township on the even sections, was taken up. This burn will in time become val-

uable by the undergrowth of young fir coming up now, but at the present time, it contains no merchantable timber, nothing unless it would be some of the flats where cedar logs are which are good for posts and shingles. It has been fifteen years since he was in township 4 south, range 7 west, and he has not been there since these settlers have gone in there and he knows nothing of the progress they have made, with reference to the land they have settled upon, except what he has gleaned from a paper that is published in Willamina, from a correspondent out among the settlers which he reads every week. It has been, he thinks, eight or ten years since he was in township 8 south, range 6 west, and he does not know whether the even sections there, such as were taken, have been settled on in that time. He is acquainted with a considerable portion of these lands in township 4 south, range 7 west, they are in this burn. From his personal knowledge, he could not say whether the even sections are settled in that township, but he understands that they are, every one of them. It has been, he thinks fifteen years since he was over in that township, he does not recall the time when he was in there. There is, as he has said, in that township, this basin where Mr. Bible has taken his claim and Mr. Wade has taken his claim. Bible got his claim under the timber and stone act and Wade homesteaded his as vacant land. They are not using that for farming purposes, but they are using it for grazing purposes. Bible bought his holdings and does not live over there, he rents it for grazing purposes. There is a high mountain just south of this basin. The

top of it, of course, is rocky and rough, but on the south slope of what is known as Springer mountain, there are some little pockets with wonderfully rich soil, but it has a great deal of rock, large rock. Some of these pockets are from one to two or three acres in there and some little cherry flats that are very fertile. It would be pretty much of a guess as to the true percentage of these lands with which he is acquainted, in township 4 south, range 6 west and 4 south, range 7 west, if divided into 160-acre tracts that would be suitable for settlement, that is, that enough plow land could be obtained to support a family, but there are very few of these quarter sections but what would have from five to twenty-five per cent of land that could be cultivated. In township 4 south, range 6 west, the southeast portion of it, some of them, were donation land claim taken in there. It would be mere guess work to say whether men have homesteaded and earned their support for themselves and families, on lands similarly situated, containing a similar amount of land in a 160-acre tract in this burned section in which the Railroad Company still owns some land. He does not know of but one settler in township 4 south, range 6 west. He believes he has made a very good living, he thinks, by raising strawberries on his land there and has peddled them out to McMinnville, that is, from his acquaintance of fifteen years ago, he has not been there for something like fifteen years. Mr. John Wortman of McMinnville owns a quarter section in section 8 and there are two or three other claims that are taken adjoining him there in section 4, but they were taken most-

ly for the timber, he thinks.

Whereupon witness testified:

Q. Mr. Maloney, how many acres of plow land, in your opinion, would be required to a 160-acre tract, taking into consideration the use of the remaining 160 acres for grazing or other agricultural purposes, how many acres do you think it would be necessary to have so a man could go on the land and earn a living from the soil there in this community?

A. Well, for those higher sections there, I don't believe a man, unless he has stock to utilize the grazing, could make a living on what land could be cultivated.

Q. Unless he had stock?

A. Yes.

Q. Well, utilizing it—if he would utilize the rest of the land for grazing purposes?

A. Well, it would be pretty hard to say."

Whereupon witness testified that he distinctly remembers some man calling upon him at his office in McMinnville, but he does not recall the date. The face of the gentleman sitting there (Mr. Laughlin) he has seen him before, he is the man who called on him there and witness executed some document in reference to the character of these lands after he had conversed with Mr. Laughlin.

Whereupon witness testified:

Q. I will ask you to examine this document, Mr.

Maloney, and state whether or not that is an affidavit that you executed before Mr. Laughlin, relating to these lands on the date that is stated in the jurat to the affidavit?

A. That is my signature, and as far as I can see, it was executed.

Q. What were the circumstances under which you signed that document, Mr. Maloney?

A. Well, in what way?

Q. Just state the circumstances,—how you came to execute that, any conversation leading up to the execution of it with Mr. Laughlin?

A. Yes, sir. I dictated to him, I presume, what is written there, in substance, at least.

Q. You read the statement over before you signed it, didn't you?

A. I did, or he read it to me. I don't remember which, of course, he—

Q. Now, Mr. Maloney—

Mr. Fenton: Of course he what?

A. Either I read it, or he read it to me, me looking on.

Mr. Fenton: I object to this as a manifest effort on the part of the United States to impeach its own witness, and to impeach a man who for 20 years has been one of the leading and substantial citizens of Yamhill County, who has been for eight years its County Sur-

veyor, and for four years its County Recorder, and for 20 years has had the respect and confidence of everybody in Yamhill County:

Mr. Rabb: The affidavit is not offered for the purpose of impeachment, but offered for the purpose of showing that the Government has been taken by surprise with the testimony of this witness, as reliance was made by the Government upon this statement made over the signature of Mr. Maloney, and has called him as a witness basing it upon that statement.

Mr. Fenton: Then the objection is further made that that is not a good reason for attempting to get into the record a statement made by this witness at the instance of the Government Inspector, upon a conversation that may have been loosely had in his office, and written out by the Government Inspector for the purpose of this case.

Q. Now, Mr. Maloney, in this affidavit, is it not stated that 'I, H. S. Maloney, a citizen of the United States, of legal age, residing at McMinnville, Oregon, where I am County Recorder of Yamhill County, being duly sworn, depose and say: I have lived in Yamhill County, Oregon, near the lands below mentioned, since the year 1877. For about 20 years of said time I lived on a farm, about half way between the towns of Sheridan and Willamina, Oregon, where I raised farm products. However, I hired most of the farm labor done, and spent most of my time in surveying near-by lands. During the remaining portion of the time since 1877, I was also engaged in surveying work, except since about

three years ago, when I became County Recorder. During said period from 1877 to 1908, I served as County Surveyor and Deputy County Surveyor for a number of years.

"I have surveyed lands in Township 2 South, Ranges 5 and 6 West; Township 3 South, Ranges 5, 6, 7 and 8 West; Township 4 South, Ranges 5, 6, 7 and 8 West; and Township 5 South, Range 7 West; and have as a consequence become familiar with the lands embraced therein. In some of these townships, I have made several surveys of section and quarter section lines and of particular tracts.

"The greater portion of the even numbered sections in the townships above described has been occupied by settlers for years; and the odd numbered sections will average just as good for purposes of settlement as the even numbered sections. I am confident that, should the said odd sections revert to the Government, and be thrown open to settlement and entry, at least ninety per cent of the quarter sections embraced therein would be taken up by settlers for home building purpose. I think that said quarter sections of 160 acres each will average at least 10 acres of tillable land per quarter section, and that most of the remainder of each such quarter section could be used to advantage for grazing purposes.

"Except on the high elevations, fruit of excellent quality and quantity can be raised on said cultivable lands.

"The odd numbered sections in the townships above

described have not been, and are not being now, settled upon, because it is generally understood among the people that said lands were withdrawn from sale by the Railroad Company a number of years ago, and that title from the Railroad Company cannot be secured. Consequently, I can give the names of no settlers on odd numbered sections who have made application to the Railroad Company to purchase and been refused.

H. S. MALONEY.

Subscribed and sworn to before me this 29th day of February, 1912, at the Court House in McMinnville, Oregon, the affiant having previously read same.

HARRY E. LAUGHLIN,
Special Agent."

That reading is correct of that statement, isn't it?

A. As far as I know it is, yes.

Whereupon complainant offered in evidence the document referred to in the questions to the witness marked "Government's Exhibit 123." Whereupon the same was received in evidence and is hereinbefore set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 123."

Whereupon witness testified in answer to interrogatories on behalf of defendants that the hand writing on the back of this document is in the hand writing of Mr. Laughlin and was made at the time.

Whereupon defendants offered said writing endorsed

on the back in evidence and the same was received in evidence as follows:

"Note. Mr. Maloney is engaged in a political campaign for re-election, and does not wish to be called as a witness till said campaign is over, unless it is absolutely necessary in the interests of justice." Signed "Laughlin." "Further Note. Mr. Maloney is a man of substantial character and definite opinions, and, in my opinion, would stand up well under cross examination. Accordingly, I believe he would make an excellent witness for the Government. Laughlin."

Whereupon said witness was further interrogated and testified as follows:

Q. Mr. Maloney, at the time Mr. Laughlin called on you at your office, and you executed this affidavit, you went over township plats, did you not, which you had there in your office, before you executed the affidavit or expressed an opinion?

A. He had the township plat there, which was copies of the Government plats which I had, and we may have referred to the maps on file in the office.

Q. You used your own plats? You had plats there in your office?

A. Yes, sir, have had them there all the time.

Q. Which you looked at and examined prior to executing this affidavit?

A. Oh, yes.

Whereupon, on cross examination, witness testified

that township 2 south, ranges 3 and 4 west, is nearly all in the old settled part of Yamhill County, and he thinks that the east half of townships 2, 3, 5 and 6 are in the old settled part of that county, he is not sure. Township 5, ranges 6 and 7 west is in the old settled part of the county around Sheridan and Willamina. He does not own any place now near Willamina, the place where he farmed was on the William McClure donation land claim about midway between Sheridan and Willamina, in the old settled part of the county. The claim of John Wortman was in section 8, township 4 south, range 6 west. John Wortman is cashier and president of the First National Bank of McMinnville. He is a banker at McMinnville and is considered a capitalist in that county. He purchased that quarter section from McCormack, who took it as a homestead. He does not know what Wortman purchased it for, but presumes it was more for a summer resort than anything else. It has very little green timber on it, he does not think he bought it to make a home, he has a home and resides in McMinnville. A. S. Bible referred to by him is dead, he was a big cattle man in Yamhill county for a number of years, lived at Sheridan and pastured his cattle in the foothills and mountains back of Sheridan in these townships referred to by him. This memorandum on the back of Government's Exhibit 123 that speaks about his not desiring to be called in this case until after the election, unless it was absolutely necessary in the interests of justice, was his own suggestion made to Mr. Laughlin. He was running at that time for the office of County Re-

corder, his competitor was Dr. J. H. Nelson, Holt Nelson of McMinnville, an old pioneer popular young man of Yamhill County and a republican, and witness is running on the democratic ticket. That county is republican by 1600 and something, according to the registration. He was elected once before County Recorder and three or four times County Surveyor and always elected on the democratic ticket and was a candidate on the democratic ticket yesterday but does not know whether he is elected or not. He probably got a majority of all the votes around where people know him at Sheridan. He came from Tennessee to Yamhill County, was born in Tennessee and had lived in Yamhill County since 1877. He first came there in 1873, but did not permanently settle until 1877.

Whereupon, on re-direct examination, witness testified that the registration of Yamhill County showed 1600 republican majority, the registration he is speaking of, the republican registration was 2,545 and the democratic 993, these are the exact figures taken from the clerk's office yesterday. He has not talked one word to any of the attorneys for the Railroad Company, either the Southern Pacific Company or the Oregon and California Railroad Company about his testimony in this case. He has been acquainted with Mr. Fenton for a number of years and Mr. Frank W. Fenton is the local attorney at McMinnville. He has never mentioned the matter to Mr. Fenton or he to the witness or the witness to him.

Whereupon, on re-cross examination, witness testi-

fied that he never had had any conversation with Mr. Fenton about this case or about anything else since he came to Portland as a witness here, and he has never talked with F. W. Fenton at McMinnville about this case, directly or indirectly, never even mentioned it to either one. He talked a little here, since he came down with Mr. Foster, Mr. Steward and Mr. Switzer. Mr. Foster is one of the witnesses that is to be called in the case, referring to Harrison Foster, F. J. Steward and J. M. Switzer, who were subpoenaed and came with him from Yamhill County and who are his old acquaintances and are witnesses for complainant, all of them. He did not come with them, they came yesterday and he came this morning. He never talked over with them what his testimony should be. He did not come down with them yesterday and he had no conversation as to what their testimony would be at all. They were just simply trying to estimate a little of what per cent. That is a problem that they consider as mere guess work as to what per cent and that was the principal talk, that is to say, he and these gentlemen have since they came here talked with each other about what per cent they thought would be, or might be, agricultural, if the timber was taken off, but they have not talked with anyone representing either of the companies or any of these defendants in respect to what his testimony should be or was.

Whereupon H. SHELTON, called as a witness on behalf of complainant being duly sworn testified that he is sixty-nine years old and lives six miles above Scio in section 7, township 10 south, range 1 east in Linn Coun-

ty, Oregon, and has lived there all his life, pretty nearly. They emigrated to Oregon in 1847 and he has been living there and was raised on the place, it has been sixty-five years ago, he was four years old when he came there, that was his father's place, a donation land claim of 640 acres, and he has been engaged in farming as his occupation all his life. He raises hay, oats and wheat and some stock. In its original state his father's donation land claim was mostly bottom land, there was some little on the hill side, but not much. It was not timber, only there were oak grubs on it and since they had moved there, settled there, there is second growth timber on some of it, that is, what has not been cut off. He is acquainted with the territory east of Scio. He has been out east of Scio, say ten miles each way or more. He notices on "Defendants' Exhibit 259" that Thomas Creek is marked on this map and Crabtree Creek and Crabtree, the post office, the town of Crabtree, and also Latham, Larwood and Jordan are marked on this map. He is acquainted in section 19 of the unsold lands of the Railroad Company which is south from where he lives, in sections 19 and 29, he has been over them, these sections are in township 10 south, range 1 east. There is a portion of section 19 which a man bought some, and there is fruit growing on it. He bought forty acres there in the northeast part of section 19. Some of section 19 has a good deal of timber on it, and there is some of it kind of open glades. He thinks that probably seventy-five per cent could be plowed after the timber is removed or after the land is cleared. Section 29 in township 10

south, range 1 east, has 560 acres of railroad land and is better than section 19. He has a general acquaintance with these lands shown in green markings for ten miles from where he lives in section 7 in township 10 south, range 1 east. Thomas Creek goes through that section, and according to the markings of this map that would extend over into range 2, township 10 south, range 2 east. Section 29 is as far south as he has been. He has been quite a ways northeast up towards the Santiam river, towards the railroad, up towards the north fork of the Santiam River, up that way. He used to hunt quite a bit up in there and he is acquainted with the lands as far up as the north fork of the Santiam. He has been over the land hunting, sufficiently to give him a general knowledge of the lay of the land and the soil a good deal and of the timber growths, etc. Some of it is suitable for farming and some of it has mostly timber on it. He would think there would be seventy-five per cent of this area with which he is acquainted, containing the railroad lands, take it all over so far as he has been over it and examined it and hunted over it, that could be cultivated, if it is cleared. He does not know if that percentage generally would be carried out as to each 160-acre tract. If it was divided into 160-acre tracts, it would not, hardly on all of it, some of it there is rocky and steep and it could not be cultivated. It is pretty good for grazing, there have been a good many who had stock there that run on the mountains there all the year round, here in the early days, but now days they do not allow them to run out. Speaking generally of all the townships, if the

land were divided into 160-acre tracts there would be, generally, this percentage of plow land in each 160-acre tract. There would be sections perhaps that none of the land could be plowed. The lands are generally timbered in this country. Some places there are kind of open glades in it where there is no timber and then there are others that have thick heavy timber.

Whereupon, on cross examination, witness testified that his father's donation land claim was in sections 6 and 7, and where witness lives was in section 7. He lives on the Hammond Shelton donation land claim, part of his father's place. His father settled there in 1847, crossed the plains and he has lived there from his boyhood, from the time he was four years old up to the present time and has seen that country grow and develop and the lands settle and change hands. These unsold railroad lands that he has hunted over he supposes that for twenty years after 1866 they had no real value, not particularly.

Whereupon witness testified:

Q. When did they begin to have a value, as you remember it? About how long ago and for what purpose did they have a value? What first started the inquiry among them?

A. Well, it was for the timber.

Q. When did that first arise?

A. Well, that has been about, let's see, that must have been about ten years ago.

Q. Before that, these lands were hardly worth paying taxes on, were they?

A. No. They didn't value them anything. You see they were just in the woods that away.

Q. In the mountains, like?

A. In the mountains, yes.

Q. And away from any settlements?

A. Yes, it was away from the settlement.

Q. And are they not pretty rough?

A. Well, some of them is tolerably rough and some aint.

Q. They are mainly covered with reasonably good saw timber?

A. Yes. Yes.

Q. And that in the last ten years has had a market value?

A. Yes.

Q. There have been some homesteads up in that country taken for the timber, on the even sections, haven't there?

A. Yes.

Q. And those homesteads after they were taken and proved up, have been sold to timber people?

A. Yes, sir.

Q. They are chiefly valuable, then, for the timber that is on them?

A. Well, at the present time, but if the timber was off, why, they would be fairly good for some——

Q. They could be plowed?

A. Yes, some of them, yes.

Q. But the chief value at the present time is for their timber?

A. Yes, at the present.

Q. And has been for the last ten years?

A. Yes.

Q. Do you know what a good quarter section of timber up in that vicinity can be sold for now, about?

A. Well, I don't know what they could be sold at now. There is one of my neighbors there had a quarter section up there, and he got $5,000 for it.

Q. Was that a homestead?

A. Well, he took it up as a homestead, and then he commuted on it, and paid out in 14 months.

Q. He never lived on it, then?

A. Well, he stayed there awhile on it.

Q. Just stayed a night or two?

A. Yes. Yes.

Q. And then commuted and got a patent?

A. Yes.

Q. And then as soon as he got the patent, why, he sold it to the timber people?

A. Yes, sir.

Q. Was that done pretty generally around there to get these timber lands?

A. Well, I think that was about the way.

Q. The way it was done?

A. Yes, I think so, to the best of my knowledge.

Whereupon on re-direct examination witness testified as follows: "Q. Well, Mr. Shelton, this man that you spoke of, that commuted on this claim never cultivated or really established or maintained a home out there? A. Well, he put out some trees out there, some fruit trees and planted some potatoes." His name was Frost and there was some more who took claims the same time right in the same locality. He does not know whether they made nothing more than a pretense of complying with the law, he could not tell about that part of it now, they left their homesteads as soon as they had commuted and sold their claims. The land is chiefly valuable for its timber in its present condition with the timber standing. The timber would have to be removed in order to plow the land, that is the way. The land, of course, without removing the timber would be of no use for tillage. There is hazel brush and cherry and such as that in these open places. These areas could be cleared at very small cost compared to what the timber lands would cost, it would be cheaper. It is a fact that the lands in this community have been largely taken and are owned under this grant and by the Northern Pacific

Railroad Company which filed scrip on a large portion of the even numbered sections, before the survey was made, there was quite a bit of that. The homesteaders in that area were comparatively few, there were not so very many.

Whereupon, on re-cross examination, witness testified that he rather thinks it would cost more to clear this timber land and put it in cultivation than it would to go down in the valley and buy cleared land. Whereupon, on re-direct examination, witness testified that if a man had little means he could not get land in the valley for $2.50 an acre. As a poor man's proposition the valley lands would have to be excluded.

Whereupon W. H. YOUNG, called as a witness on behalf of complainant, testified that he is forty-seven years old, resides about three-quarters of a mile below Scio in Linn County, Oregon, and has lived in that county about thirty-two years. He is a farmer and has been engaged in that business upwards of twenty years, and always in Linn County. His farm is in township 10 south, range 1 west, and is part of section 18. He had another place of forty acres right below that which he farmed, in township 10 south, range 2 west. He was engaged in the cultivation of land there, he grubbed out some, it was nothing but a stump patch and tree, and he got that up, and put it into oats, that was the first place that he was on. There is eighty-five acres on the place that he has now, bottom land, and the other land was about twenty-five acres on the bottom and fifteen acres on the hill. That bottom land

that he farms now did not contain any growth of timber, that has been under cultivation a good many years, it was the old donation land claim of George Thomas. He has about forty acres in cultivation where he lives now, and he is making his living from this land which he is farming. He is a married man but has no children, he has had a boy with him whom he took to raise, he has had him for about ten or fifteen years. He is acquainted with farming conditions generally in Linn County. Referring to "Defendants' Exhibit 259," at Crabtree Creek, pointing to the section above Larwood, is where they go into the mountain. He is acquainted right in about Thomas Creek, which is on the eastern place limits of the grant as shown by this map, the twenty mile limit. He is acquainted with the lands west of there, and between Thomas Creek and Crabtree, between those two creeks in there. He is acquainted in through that area between Thomas Creek and Crabtree Creek, west of the line, the twenty-mile limit marked on this plat. He went over that territory for the purpose of hunting. He has been in township 10 south, range 1 east, south of Jordan, a branch of Thomas Creek runs down there through that country. He is acquainted with the formation of this entire area between Crabtree and Thomas Creeks and the east line of the place limits, and the general formation there and the growths that are there. He would think, that between 65 and 75 per cent of that land could be rendered suitable to cultivation by removing such growth as is on it, clearing the land. This territory is not all of it

covered with timber. Some of it is heavy timber, and some is in the deadenings, and some is vine maple flats. When he first started in there in hunting in this area, he supposes it has been over twenty-five years ago and this is the first year he has missed hunting there for fifteen or eighteen years, he has covered that entire ground there.

Whereupon, upon cross-examination, witness testified that the place that he owns there is a part of the donation land claim of George Thomas, who settled on Thomas Creek, but he does not know whether the creek is named after him. His place is west of Scio a half or three-quarters of a mile. The way they have to go to these timber lands, up Crabtree Creek from Scio, where he has hunted over them, takes them till they get to their camp, twenty-five miles, the way they travel by the trails. It would be a little less on a straight line, but to their camp where they hunt, that is up in the mountains. That country is pretty well timbered, in the main. He has been up Thomas Creek from Scio something over thirty miles or more, and that is in the timbered country. This little place on this map referred to is called Larwood. That is not the beginning of the mountains. The mountain starts about a mile or two miles from Larwood where they started, and these mountains do not get pretty steep after that, but just a kind of gradual grade down there—benches. He thinks the survey for their camp is about eighteen hundred feet high. This land up in there is covered pretty well with saw timber, as a class. He has lived there

in the vicinity of Scio for about thirty-two years. The unsold lands of the railroad company for the first twenty years after 1866 down to 1886, or about 1890, were considered worth two dollars and a half an acre, what they were figuring it on. They were not counted worth very much. It is only in the last eight or ten years, since the land became valuable for timber, that these lands have been looking up and had a market value.

Q. Do you remember about when timber first became to be an object and people would go out and get claims under the Timber and Stone Act, and go out and get homesteads in those mountains east of Scio? About when was that?

A. I don't think it is over ten or twelve years ago.

Q. A good many people went out there and took homesteads and got their title, and sold to timber people, didn't they?

A. Yes, sir.

Q. And a good many people took up quarter sections under the Timber and Stone Act where they did not have to live on it at all?

A. Yes, sir.

Q. And then they have sold that to timber people?

A. Yes, sir.

Q. And the same kind of land as these railroad lands, only they are a little better?

A. Well, I don't know. It is just about a stand-

off between them.

Q. About the same. Well, then, these railroad lands as they go down towards the foothills, have been on the market until the last seven or eight years? They were on the market as far back as you recollect nearly, haven't they been?

A. Well, I don't know anything about that. I never thought much about that.

Q. If there were any railroad lands down around Scio, and in that section of country, little fractions here and there, they have long since been bought up by farmers, haven't they?

A. Yes, all I know of them.

Q. Now, this map shows that there are no railroad lands near Scio until you get about four miles east of Scio, then there are small fractions that the company still appears to own, between Crabtree and Thomas Creek. Is that because it was hill land or timbered land that was not taken under the Donation Law or how did that happen?

A. I couldn't say how that would happen.

Whereupon witness testified that most of the land around Scio proper was taken under the donation land claim law, and that is one of the oldest parts of Linn County, they settled part of the forks of the Santiam. He never took a homestead up there. His only knowledge of these unsold railroad lands there in the mountains, is, that he has hunted over them about once a year

ever since he has been big enough to go hunting, and that is the way he got the knowledge that he has of these lands, by going over them as a hunter. He has hunted, he has made as high as five trips in the mountains, getting deer, elk very seldom. That country up there is not a wild country. He has had deer right down two years ago, right close to a few miles of his home. In the summer time, in August, the deer come down sometimes and follow the streams, but that is unusual in late years. This timber land up there is a long ways from the Three Sisters. He could not say how far from Mt. Jefferson, which is a snow peak in the Cascade Range and is nearer than the Three Sisters. Mt. Jefferson is on the headwaters of the McKenzie, the Three Sisters are further south.

Whereupon, upon re-direct examination, witness testified that Mt. Jefferson is about thirty miles on an air line from the western boundary of the indemnity limits of this grant, and would be about forty or fifty miles from any of this land at least. That is what they always count, between fifty and sixty miles, that is the way they always guessed it in the mountains, from the summit where their cabin is on the mountains. It is a fact that the greater portions of the even numbered sections in this area were taken by the Northern Pacific Railroad Company scrip prior to survey, and there were comparatively few homesteads ever filed in this timbered country. The settlers, as they came into this country, settled first on the creeks and river bottoms, and the settlers as they have come into the country have pushed

back into the foothills and the mountains. In the last fifteen or twenty years the demand for lands for settlement and homestead purposes, has increased in that community. They have men in their country they cannot rent a farm for. Farmers themselves have to sell their stock for they cannot get lands to run the stock on. The lands in this area, in the even numbered sections, have been taken up practically since survey largely by scrip locations, and that has prevented settlement on the even numbered sections by persons seeking to farm to obtain farming lands.

Q. What has been the effect of the railroad company's failure to fulfill the conditions of this grant, and sell the land to actual settlers in 160 acre tracts at $2.50 an acre? What has been the effect in that community, in your opinion?

A. What effect has that had?

Q. Yes.

A. Well, it has had the effect to keep people to taking a homestead.

Q. Has it retarded the settlement of lands?

A. Well, yes.

Whereupon, upon re-cross examination, witness testified that he does not know why the people did not buy these lands at two dollars and a half an acre twenty years ago. Sometimes a man is so that he has not got means to buy them. He never gave it a thought as to whether these timber lands twenty years ago were worth

anything, he knows that the whole timbered country up there twenty years ago was considered waste land, and in some parts of that timbered land it would cost more to clear the land than one can buy valley land for.

Whereupon, upon re-direct examination, witness testified that a man of small means would have some difficulty in buying valley land at two dollars and a half an acre, and especially in their country. It is a fact that other lands, other than timber lands, were open to homestead entry twenty years ago, and people were not forced into the timber sections, and that is the reason they did not take that land. He has never known of the railroad company offering any of this land in this area at two dollars and a half an acre.

Whereupon, upon re-cross examination, witness testified that he never tried to buy any of it at two dollars and a half an acre, but he had a friend who did try it, in the last four or five years, under that act.

Q. He wanted to buy a good timber quarter, didn't he?

A. I couldn't tell you what he wanted to buy. He said he tendered the money, and they wouldn't take it. That is all.

Whereupon witness testified that his friend did not tell him where this quarter section was, but it had to be up in the timber, there was no other, it had to be up in the timber.

RE-DIRECT EXAMINATION.

Q. The land wouldn't necessarily be valuable timber land that a man would take in this area, Mr. Young?

A. Well, the way it is standing, it would be more valuable for the timber, if you take the timber off.

Q. You would have to clear the land before you could cultivate it?

A. You would have to clear the land before you could cultivate it, yes.

Q. Well, this friend didn't get the land?

A. No, sir.

Whereupon N. I. MORRISON, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty years old, and resides in Scio, Linn County, Oregon, and has resided in Linn County about twenty years. He had been engaged in farming to a considerable extent in Linn County, in section 24, township 10 south, range 1 east, where he owns land. He is not now engaged in farming, but left his farm four years ago next February. He had a homestead there of one hundred and sixty acres which he had taken up and upon which he had lived thirteen years. The land was brush and timber when he took it up. He was a man of family when he took his homestead, and his family resided with him on the homestead during his residence there, and he earned a living for himself and family from the homestead. He had about fifteen acres under plow, and a few acres cleared up ready for plow,

and an orchard set out that had never been plowed. He raised mostly grain hay, oat hay, and raised no wheat—nothing except what he raised mixed, oats and wheat mixed, for hay, he never saw anything better than he raised there, he raised vetch and things of that kind. He raised 26½ big loads of vetch and oats off of four and a half acres. That is very productive soil and he raised all kinds of vegetables, potatoes, beets, cabbage and squashes, everything. That soil produces good vegetables. Referring to "Defendants' Exhibit 259," he is acquainted with all of township 10 south, range 1 east, township 10 south, ranges 2 and 3 east, and the north half of township 11 south, ranges 1, 2 and 3 east. His homestead was located in section 24, township 10 south, range 1 east, on the east side, next to the township line, between ranges 1 and 2 east. There are railroad lands on all sides of him and those lands were better than his homestead, that is, he means for agricultural purpose or homestead purposes. He has run lines in this area with which he is acquainted, and in trying to help people find land in there, and has hunted over practically all of it, packed in there for cruisers—all over it—packed three months, every day, at one stretch, and is thoroughly familiar with the land and its formations and soil conditions. In his opinion, from his experience in farming in this vicinity, he would think probably in the neighborhood of 70 to 75 per cent of that land could be rendered suitable for cultivation after clearing the land of any timber or brush that might be upon it. These lands would average the same if divided into one hun-

dred and sixty acre tracts, that is, that percentage of plow lands would hold good as to each hundred and sixty acre tract. He knows some railroad sections that nearly every foot of it could be plowed. There is section 31, township 10 south, range 3 east—the railroad company does not own that now, that was sold to Green & Avery Timber Company. The railroad company has sold large areas of land there to big companies.

Q. Mr. Morrison, from your experience as a homesteader, what would you say as to the suitableness of these railroad lands for homesteading purposes, that is, going on it and taking up a homestead, and living on it, making a living on it, as you have done on your homestead?

A. I would not be afraid to tackle it on pretty near any of them. Of course, some would make a failure of it probably anywhere.

Q. In your opinion, Mr. Morrison, what has been the effect of the failure of the railroad company to sell this land to actual settlers at $2.50 an acre in 160 acre tracts, that is, the effect upon the community there.

Mr. Fenton: I object to that as assuming that the company has failed to comply with the terms of the grant in any particular, and as incompetent.

A. Well, it retarded the settlement. I know of parties that wanted to get land that did not have any timber on it, for to make a home out of—land adjoining me, and they would not sell it, would not put a price on it.

Mr. Fenton: That is recently?

A. That was seven or eight years ago.

Q. The lands, then, are not all covered with timber?

A. No, not all of it.

Q. This party that you spoke of, they wanted that for agricultural purposes?

A. Yes, sir.

Q. And the railroad company refused to sell to to them?

A. Yes, sir. The party lives here in Portland.

Q. Did they make a tender, do you know, to the company?

A. No, no. They just wrote to them and wanted to know what the price was, and they wrote back and told them that it was out of the market.

Whereupon, upon cross-examination, witness testified that the transaction last referred to was about seven or eight years ago. His homestead is in section 24, township 10 south, range 1 east, and about twelve or thirteen miles from Scio. He is on a fork of Thomas Creek called Blue Creek, about five miles from the mouth of Blue Creek. He kept stock on this homestead and used the grain, vetch and oat hay that he raised to feed his stock. When he first started in, he had only one cow, but he got into the stock business, more or less, as he could get it, got stock, goats, sheep and cattle. He enclosed all of his homestead excepting about a quarter

of a mile on one side of it, which he left open, that was back on section 19, a piece of railroad land, range, and he left that so his stock could range out over the railroad lands as far as they wanted to. He never had as many as forty or fifty head of cattle during the time he was there. He had about eighteen or twenty head, he thinks that was the most cattle that he had. He sold some each year after he got started. He could not tell exactly the most money he received in one year for sales of his beef cattle or calves. Probably the most cattle he sold at any one time was about one hundred and ninety dollars' worth, he probably sold more than that in one year. He only raised hogs, enough for his own use. He kept about ninety head of goats, and confined them to a particular pasture. The goats could run anywhere on the west half of his place, they would not go out through this opening, this quarter-mile back, there was a fence across there, he had it fenced through the center. He had 90 or 100 acres pasture, and probably five acres of this ninety or a hundred acres cleared up, ready for the plow, but it was never plowed, and probably 15 acres under plow in the whole quarter section. He still owns his place. There is saw timber there on his place, about two million feet, worth from seventy-five cents to a dollar a thousand. The majority of this railroad land that he had been over, that he had hunted over, and through which he had made some surveys, and into which he had packed for cruisers' supplies, is pretty well covered with saw timber. These cruisers were not cruisers of these mill companies or railroad cruisers, they

were just timber cruisers or companies that made a business of cruising tracts of land in order to find out how much timber certain landholders had in order to sell it to other buyers. He was not engaged in the business of locating people on timber lands in that section, not actually in the business. He helped them to locate, showed them places and the like of that, but he never asked anything for it. He helped people who wanted to find a timber quarter, helped them to locate and find the quarter. The demand for these timber lands became rather active about ten years ago, something like that. For many years before that, these timber lands were not sought after very much.

Q. Don't you know that for twenty years after 1870, say down to 1890, these timber lands of the railroad company and these unsold lands were practically valueless so far as any demand was concerned? Don't you know that to be a fact?

A. Well, yes, but then if I had had money, I would have been pretty apt to have bought some of it.

Q. Yes, you would have bought on anticipating that you could sell it, if you could buy it, at, say $2.50 an acre, you could have let it lie there until it became worth something?

A. I wanted to buy, did buy some railroad land. I wanted to buy more and they would not sell it.

He bought railroad land in sections 25 and 13, township 10 south, range 1 east, forty acres in each one of

them. He contracted for forty acres in section 25 in 1901 and paid two dollars and a half an acre for it. He bought a contract for the other forty in section 25, that was all. He wanted to get some more land next to that in section 19, and in 25, and they would not sell it to him, and he knew a party who had a contract on a piece of railroad land in section 13, and he bought his contract and paid four dollars and a half an acre. This man contracted it about the same time that he did, about eleven years ago, about 1901. The land that he bought for two dollars and a half an acre did not have any timber on it, it was covered with brush, vine maple mostly, but the soil was A No. 1. It was adjoining him, and that was the reason that he wanted it. The other tract had timber on it, probably about 800,000 feet, that is, on the forty acres. He sold that and got $1150 for it. He sold it partly to timber people, that is they hold a little timber there adjoining it. It was sold for the timber, that is what they bought it for, he expects.

Q. Now, as a matter of fact, Mr. Morrison, whatever homesteads were taken up in that timbered country within the last eight or ten years have been chiefly taken on timber quarters, haven't they?

A. Not all of it.

Q. I know, but the main ones have been taken, the best timber quarters that they could find?

A. Well, there is a good many homesteads taken in there, or several of them, not a good many that I advised them to go back and take a piece of timber land,

but they said they had been raised there all their life, and they did not think it would ever be worth anything, and so they took up a piece of brush land in preference to the timber.

Q. You advised them to take the timber?

A. Yes, sir.

Q. Under the Homestead Act, you thought that would be worth more money?

A. Well, I knew it would.

He knows of a section of timber land in that country for which they have refused sixty thousand dollars, that is section 28, township 10 south, range 2 east. It was to be practically a cash purchase, he cannot tell who owns it now. It was not taken under the Timber and Stone Act. He does not know the people, they were people that just came in there and took it for the timber, and it is still in the hands of the first takers, he is not positive though, but thinks it is. That section has never been cruised by timber cruisers, but it has probably sixty million feet on it, some of it is fir and some hemlock, this piece of land, that timber section, is about eighteen miles, something like that, east of Scio. Land around Scio—five or six miles from Scio—open land, is being sold in that old settled part of the country, without improvements, farming land, at one hundred dollars an acre. Nothing that is tillable, within five or six miles of Scio, can be bought for fifty dollars an acre. To buy any cleared land within five or six miles away from Scio, away from the influence of the town and in

the country, one would have to pay as much as a hundred dollars an acre, or if one gets out fifteen miles east of Scio, he would have to pay one hundred dollars an acre, and down towards Albany Prairie, down in that direction, it is worth probably more than that down there. Land has been going up for several years, kept going up. He knew of people applying to purchase these timber lands up there from the railroad company under this Act of Congress, and offering to pay two dollars and a half an acre, on these printed blanks that were circulated through the country there about five or six years ago. He does not know whether there were any parties from Scio or not who did this. There were a good many of these people who were strangers to him. They came there and put up a notice on a piece of his land, wanted to build a cabin there, on a piece of railroad land that he bought, and he told them that he guessed not, it was not a piece of timber land that he had bought, there was no timber on it, they put up a notice on it, and they put up a notice on a quarter section that he had applied for, they didn't build any cabin on there. The railroad company told them, as he understood it, that they would not allow them to build there, told them if they built there they would have them arrested for trespass and for malicious destruction of property, or something like that. He was not going to allow them to build a cabin and go into possession of his land if he could help it. Aside from that particular instance, these notices were posted all through that timbered country on these quarter sections. Some parties went in there and started

cabins, and then they served notice on them not to cut any more timber, not to cut anything to build their cabins out of. He does not know as there were dozens of these people, but there were a few there that he saw personally, and they claimed they were going on there, but they did not. They posted their notices just the same. Some of the places where these notices were posted had good timber, and some of them not so good, and some of them had no timber on. It would be a pretty hard matter to find a quarter but what had a little timber on anyway. It is a timbered country. These people found out what quarter section to get—there were locators that located them around just the same as they did on the government land, etc. People did not know where the section lines were, or section corners, or anything, and they would hire someone to go and show them where a certain piece of land was, and they would pay the locators a fee for that service. He thinks the highest he remembers they had to pay was about twenty-five dollars. He never heard of their paying as much as two hundred dollars if a man found a good timber quarter. They might have done so in some other localities—he does not know anything about it—but what they located in there, the parties charged them twenty-five dollars. One of these locators lived around Scio, but did not make a business of it. He made a business out there for a while, a short time. He knows of a lot of these lands being taken up under the Timber and Stone Act. These lands would be pretty good lands if the timber was off, but they were timber

lands. These people that took these lands under the Timber and Stone Act did not go out there and make farms of them, he has an idea that a good many of them never saw the land. He supposes that after they got the patents they sold the land to the timber companies probably, a good many of them. He knows that most of that land has gone into the hands of timber companies, and he does not know of any one tract any larger than that big section that is in the original hands, he knows of several smaller tracts that are owned by the original owners under the Timber and Stone Act.

Whereupon, upon re-direct examination, witness testified that it is a fact that a good deal of the even sections were located there by Northern Pacific scrip, which could be filed on unsurveyed land, in townships 11 and 12, ranges 2 and 3 east. The Northern Pacific company would scrip the even sections, and the Oregon & California Railroad Company owned the odd sections, so there wasn't very much room for either the homesteader or the Timber and Stone entryman. The land around that $60,000 section of which he spoke is all about the same right in there for several sections, that is in township 10 south, range 2 east. The timber there is far above the average of this general area. There are two or three sections in there where there is not very much difference, but then take the surrounding country, it is probably a little above the average right in that locality, in township 10 south, range 2 east, and as one gets down towards the valley, the timber is less. Practically all of the government lands have been taken

up in this country, and if a man desired to obtain land for homestead purposes, the last ten or fifteen years, he was compelled to go into the timbered area, like he was, to get a homestead.

Whereupon C. E. CLARK, called as a witness on behalf of complainant being duly sworn testified that he lives in section 21, township 11 south, range 1 east and has lived in that section ever since 1872. His father came there when he was a boy. His father formerly lived in the State of California and moved north into that country. Witness was one of thirteen children. His father had formerly been a farmer in California and came to Oregon in 1872 and brought him along with the family. He settled just below that land, bought about 215 acres, his old place, from a man by the name of Peter Zell where he lived. He did not die there on that place but he died about four years ago on the place where they are living. He lived there all this time. He and his father were ranching and sawmilling. His father got an old sawmill with the place when he bought it and they ran that. The sawmill was on the old place that his father bought. It was rather a small sawmill. There are different qualities of soil there. The upland is of a reddish cast, the bottom land is rich, some of it sandy loam, some of it black soil. One can raise anything planted and this applies to both kinds of soil. It is not very rough in there, just a gradual slope from the creek. He is forty-nine years old and has had no business experience excepting as a farmer, nothing any more than sawmilling there. He thinks that the soil is first-class.

They raise good fruit, good peaches. He has raised sugar corn and all such stuff as that, everything they plant there grows well. The soil is an average depth, he does not know that he could tell just exactly the depth of it. There is quite a bit of timber in that country there. The timber on their place they cut it, sawed it up into lumber, most of it. There is some little timber there yet. He thinks timber grows on good soil, it would not grow big on poor soil. Nothing has been logged off there in that country except what they had on their own lands. There has nothing been cut off the railroad lands back there. They sawed the saw timber out and the balance of what they had cleared up they rolled the timber together and burned and put the land into cultivation. He has about fifteen acres on his place that is under the plow and probably that much ready to plow that is not broke up yet. They had a home market there for their lumber from people living near by. He does not know as he could tell by the sections what area his knowledge extends to, but he is well acquainted with that country between Crabtree and Thomas Creeks and on both sides of Crabtree, some places over as far as the Santiam, and he supposes the area of a couple of townships. He has been all over that country, has seen the different farmers there using the soil and what they raise on it and that extends to townships 11 and 12, ranges 1 and 2 east. Crabtree runs right through townships 11 and 12. Crabtree Creek is northeast of Lacomb. He thinks that these unsold railroad lands involved in this suit are susceptible

to use by the settler. A man could go in and subject it to settlement and make a home of it and they would have been sold years ago if they had not taken them out of the market. He knows the railroad lands, knows it all, knows the sections as they come that way but could not call to mind just their lines and knows the areas and the character of the land. Fruits of all kinds grow well on that land, also vegetables of all kinds, wheat and oats and they raise nice kale, corn, cabbage and anything pretty nearly that one plants on it will grow. He never has tried sweet potatoes, but he believes he has ground that will grow them. He put out 130 peach trees there last spring and they are as fine a growth as he ever saw. Everybody that has looked at them say they are nice. Out of the 130 he only lost two trees. The railroad company will not sell its land in that vicinity, they do not sell it, the effect of that is to stop the immigration in there and the settlement. They do not have as good schools in there as they would if it was all settled up thickly, if it was all into homes, people all living there they would have plenty of children to have good schools and would have better roads.

Whereupon witness testified:

Q. What I want to ask you is, as a practical settler in that country yourself, whether the method that has been pursued by the railroad company has promoted or retarded the settlement and development of that country?

A. Why, certainly it has. I think that land would

have all been sold to settlers if they could have bought it. It would all have been settled up.

Q. Do you know of any reason why the railroad company could not have disposed of that land to settlers?

A. No. I don't know why they took it out of the market.

Q. Is it good land for settlement?

A. I think so. We have lands settled up there just like it, and some of it has been bought from the railroad.

Q. I asked you once before whether it was rough land or not, but in order to make your testimony definite, I will ask you what proportion of the land in that vicinity with which you are acquainted could be plowed, cultivated.

A. That is, after the timber is all off it?

Q. Yes.

A. Oh, you take the majority of it—of course, there are some sections, probably would be, where there were rough bluffs, or something like that, that could not be plowed, but then a majority of land up there—oh, I would say 40 to 60 per cent of it could be all plowed. There might be some hillside might be a little steep, but they have got to be pretty steep if they don't use them for something on a ranch.

Q. How is it as to that land? Is the general con-

dition of climate and moisture favorable or unfavorable?

A. O, I think it is favorable. We never had to irrigate there. Now, I have a brother-in-law from Pendleton down, he was there last year, and the year before both, and he told me I ought to irrigate, I had such a good chance there. I told him I didn't think we needed it. He was out one day right in the middle of the summer, scratched down, he said, three-quarters of an inch, and found we would get the moisture. He said we didn't need the irrigation. But then it might be good, for all I know, to irrigate.

Q. That is the usual experience that settlers always have, that somebody that doesn't know anything about it will generally give advice, isn't it, Mr. Clark?

A. Yes. In their country they have to irrigate, and here we don't. And we most generally have to have a drain somewhere to get rid of that moisture.

Q. Well, now, Mr. Clark, I will ask you one more general question, and that is this: some witnesses for the railroad company have testified that in their judgment, none of these railroad lands that are unsold and are involved in this suit, can be used for the purpose of settlement and making homes, cultivating, sustaining a settler and his family who lives on the lands. Now, without asking you to in any way reflect upon the judgment of those men, I will ask you whether you agree with them or not?

A. No, sir. I think we have got lands up there

that is far better lands than between here and home—between here and Albany. It is better land than some you are selling along here for $400 and $500 an acre. It is in the railroad hands, and they don't use it themselves, nor they don't allow anybody else to.

Q. How does that land compare with the lands in the valley?

A. Well I am speaking about this valley land along here. I was up here to Fairview, along up there, and they said there were lands there you couldn't buy for $400 or $500 an acre.

Mr. Fenton: Fairview, east of town here?

A. Yes, east of town. Those little hills along there, we have better lands up there that is not in use at all.

Q. Where do you live now?

A. I live up on the same place in Linn County.

Q. The same place we have been speaking about?

A. Yes, sir.

Q. Is it a nice pleasant home?

A. We think so.

Q. You are not looking for a trade of homes?

A. No, sir?

Q. Are there other just as good homes there?

A. I think so.

Q. In these railroad lands?

A. Yes, I think so.

Whereupon, on cross-examination, witness testified that he took a homestead in section 22, township 11 south, range 2 east about six miles from where he now lives and he must have taken that ten or twelve years ago, and lived on it during the time that he proved up. He lived on it fourteen months and then commuted. He took his family on to that place.

Whereupon witness testified:

Q. Did you stay there continuously, or did you go away to work afterwards?

A. Oh, I had to make a living. We got broke up in the mill business, and I just took up a homestead there to get a little start again.

Q. How long did you take your family and live practically on the homestead?

A. Oh, I could not tell as to that.

Q. Well, you built a cabin on it, did you?

A. Yes.

Q. And did you go up there in the summer time?

A. We had a cabin there for ourselves, and we had a cabin for our horses, an outbuilding.

Q. How much did you clear on that homestead?

A. Oh, we just put in a little garden.

Q. How much garden did you put in?

A. Oh, I don't know.

Q. About as big as this room?

A. Just about as big as this room. And then we set out some fruit trees there.

Q. How many friut trees did you set out?

A. Oh, there must have been a dozen or such a matter.

Q. Apple trees, I suppose?

A. Apple trees and plums.

Q. Did you fence the improvements?

A. Yes, sir.

Q. Now, are those improvements occupied now?

A. No, sir, I don't think so.

Q. And the trees have gone to waste, have they?

A. Oh, yes. Brush growed up around them, and smothered them out.

Q. Did you sell the claim?

A. Yes, sir.

Q. When did you sell it with reference to the time you got your patent?

A. Well, I don't remember. It was quite awhile after.

Q. Whom did you sell to?

A. Wright, Blodgett & Company.

Q. That is a big timber concern in Michigan?

A. Yes, sir.

Q. What did you get for your quarter section, if

it is a fair question.

A. $2,000.

Q. What did you pay to enter it—$2.50 or $1.25?

A. $2.50.

Q. You got 160 acres, did you?

A. Yes, sir.

Whereupon witness testified that he did not own his present place during the time he was taking his homestead, he did not own any land during that time. He then went back to the old sawmill place and bought this place here. His father's place was turned over to an assignee and he bought it at an assignee's sale. He has about fifteen acres on this place in section 21, township 11 south, range 1 east, under the plow and about that much ready to plow, that was the place that he bought in at an assignee's sale, it was a place that his father never owned, his father owned the place just below. His father did not take his place up as a homestead, that place just below, but bought it from a man by the name of Zell. It was the Joseph Elkins claim, he thinks it was a homestead. He thinks there was only 160 acres, but did not think they took donation claims under that. Elkins put up a mill there, a little mill for someone, and the man went off to the mines and was gone three years and he thought he would not get his pay so Elkins jumped his claim and took it. He could not tell how long that Zell land had been settled, it had been settled and sold a good many times before witness came to the

country. He supposes that place is ten miles from Scio southeast and nine miles from Crabtree. When he first came there, Scio was the nearest post office, but there is a little town right close called Lacomb, two and a half miles away. It is just a small place, about three stores, just a few residences. Other people went up into the foothills and mountains and took homesteads in these timbered areas in the even sections besides himself. Some of these homesteaders are living there yet, most of them did not sell to Wright, Blodgett & Company and other timber people, they did not take any timber lands around close to them. They have just taken ranches for their homes. Some of these homestead people besides himself took timber land, there is a man by the name of Herron who took a claim up there, but he sold this in the last year to some person from Medford whose name he does not know, but not to a timber man. He sold it for a fruit ranch and they are setting it out in fruit now, they put out fruit trees. He can think of some one up there who has entered a timbered quarter like he did and has sold out to these timber people. He thinks some of them entered under the timber and stone act and some proved up in fourteen months the same as he did. Some of them disposed of their holdings to the timber people. He thinks they made about the same kind of improvements that he did.

"Q. You say that about 40 to 60 per cent of this land could be made tillable after the timber was removed. Isn't it a fact, Mr. Clark, that these lands for twenty years up there, from 1872 down, these timber

lands were considered of practicaly no value?

A. Well, I don't know, it is just according to the demand for them. There was no demand for them, there wasn't many people in the country then like there is now."

He does not know when the general demand for timber became pretty active up there, it has been probably twelve or fifteen years ago. He bought some land from the railroad company. He has eighty acres that he bought from them and paid $2.00 an acre for it right where he lives in section 21, township 11 south, range 1 east. He could not tell how long ago it was that he bought it, but it has been something like twenty years ago. That is where he now lives and he has about fifteen acres cleared and there is a part of that which is on another eighty which he owns below, he owns 160 acres there. This railroad eighty that he bought is not a part of the land that he had logged off and sold to the sawmill. There is five or six hundred thousand feet still standing on this railroad eighty, that would be considered on the 160 acres that he has. The bottom land he has all cleaned off and slashed, and part of the hill land he has in pasture. He bought this railroad eighty about twenty years ago at $2.00 an acre. He was just a boy when he bought it there and he imagined it would make him a good home when he got to be an old man. One reason why he bought it was because it adjoined the eighty that he owned. He did not live on either one of these eighties just then, but he now lives on the railroad eighty.

Whereupon witness testified:

Q. Your father had a large family, I believe you said. Did he try to make a living running a sawmill?

A. Yes. He did make a living.

Q. How long did he operate that sawmill?

A. Well, he operated that until us boys was old enough to operate for him.

Q. And then you operated it?

A. We ran it.

Q. How long altogether, between you?

A. Well, we commenced there in 1872, and sold the last of it out, last of the mill out about six years ago.

Q. Did you operate it continuously during those years?

A. Oh, yes, we run it, worked along there.

Whereupon witness testified that people came up from the valley to buy lumber as far west as Scio. People in the Willamette Valley used to go up from the valley into the foothills or mountains with farmers' wagons and get fencing lumber or any kind of lumber they wanted and there was where the lumber trade was principally. He used to get about $6.00 a thousand feet for rough lumber and $12.00 and $14.00 a thousand for dressed lumber, and he thinks they can get twice as much as that now and a little more than twice as much. For a great number of years he sold his rough lumber at $6.00 and his second common for $6.00 and $8.00 and his clear stuff, dressed, for $10.00 or 12.00. He sold it as far west as Albany. Sometimes the farmers would come

up there with their teams and stay all night. They brought their hay and oats along and camped out. That is the way it used to be done through the Willamette Valley.

Whereupon, on re-direct examination, witness testified that they had no railroad up there yet, they have just got railroad land, that is all. He thinks industrial conditions would justify building a railroad into this country. Very few people realize either the advantages or the difficulties that confront a settler in this country excepting those who have actually faced them, and it is quite an easy matter either to exaggerate the advantages or difficulties. That railroad land there is just in the foot hills. He lives right in the upper end of the valley and then at that point it starts in with mountains, slopes gradually back. That does not change his testimony as to the usefulness of this land for settlement. They have a young lady up there who has taken a homestead and her mother has been living with her and they just went out yesterday to town.

Whereupon witness testified:

Q. What I mean is this: so far as the value of the land is concerned to settlers, does it make any difference whether you call it foothills or mountains?

A. Oh, I don't think so; not so they can get out and in. We have better health up there next to the mountains.

Q. Well, now, when you speak of it as foothills or mountains, does that go to the question of the character

of the land, or its susceptibility to settlement and cultivation?

A. I don't think so.

Q. When your people went into that country, was the timber of any value to you except for fuel and your building purposes?

A. Well, what we sawed into lumber was. We could make something out of it, of course.

Q. As early as 1872?

A. Yes.

Whereupon witness testified that in one way the timber is more valuable today than it was when he went in there, it is higher priced now. He does not know as the timber would be an obstacle to the settlement of that country. They have got to get that timber off. Some would use the timber in improving the lands. They have to have some timber for that but then there would be more there than would be necessary for farming, putting into ranches, as far as that is concerned. They would use that timber, they would not waste it, it should not be wasted. They could take the timber and sell it and get money for it and use that to clear the land up, and even if they could not sell the timber they could clear the land and make a good home out of it. If they could get money for the timber that would not obstruct them, but would help them in making a home out of the land, it would give them that to go on.

Whereupon, on re-cross examination, witness testi-

fied that he does not know what would be the average value of these railroad lands in their present condition. At the present time one can hardly estimate timber where it will go 200,000 feet to the acre. There is some timber up there that will go that. There is other timber land that has no timber on it at all, they are just bare, one might say. 200,000 feet to the acre has been cut right there at the Star Mill, they estimated one acre just to see what it would bring. Of course he does not know if there are many acres like that, but take pieces of timber that has 200,000 feet of timber, to take the clear lumber and work it up, one could not value it hardly. It would be worth a good deal of money. He would not feel hardly capable of pricing this unsold railroad land with which he is acquainted. He got $12.50 an acre for his timber land that he sold up there. He thinks that a timber quarter that carried 200,000 feet an acre would be worth $10,000 to $15,000, and he supposes that the value depends on how much timber one has got on the land in the main, as to whether it is high priced or low priced.

Whereupon upon re-direct examination witness testified:

Q. Well, now, just one more question, Mr. Clark: suppose that the timber should be cut off, I want to ask you, as a practical man living in that community, and knowing the conditions, whether the land would possess a value with the stumps in the ground, you understand, after the timber has been removed,—would it possess a value to the settler to come in there and clear the ground, and subject it to cultivation and make a home of it?

A. I don't know as I just understand how that is, how you mean that.

Q. Well, now, ask me more, so that I can make the question more definite. I do not want to make my question suggestive to you, Mr. Clark.

A. Well, now, ask it again, and see if I understand it.

(Question read.)

A. Yes, I think it would.

Q. What I mean is this: Is that land valuable only for the purpose of having a man come in and pretend to make a home, simply to get the timber, or is it valuable after the timber is removed for the purpose of making a home of it?

A. Yes, it is valuable, of course. It is valuable for a home.

Q. After the timber is removed?

A. After the timber is all gone, yes.

Whereupon, on re-cross examination, witness testified:

Q. Mr. Clark, it would cost about as much to remove the timber and grub it out as it would to buy an acre of cleared land, wouldn't it, if you had to hire it done?

A. It is according to the man. If you or I would go to work with a grub hoe, and grub it out, it would be very expensive.

Q. If you had to hire the work done, it would cost about as much as to buy the land?

A. I saw last winter in "the Homestead," where a man cleared 40 acres, and the timber was cut down as thick as it could be sawed. He cleared that 40 acres in one season with the help of two men.

Q. He must have been a Samson.

A. He char-pitted the stumps, burned them all out at once, he burned those logs in those holes. Now, you and I probably would not be wise enough to do that.

Q. That was one experience that you have had?

A. I just read that in "The Homestead."

Q. Oh, you read that in a paper?

A. I saw the picture of the land there, and it gave it in several numbers.

Q. The char-pitting proposition is an experiment yet, isn't it?

A. No.

Q. Do any char-pitting up there?

A. Yes, sir.

Q. How much have you done?

A. I have not done any of it, but I have seen the neighbors doing it.

Q. How much have you seen done by any person on this heavy timbered land?

A. They are doing quite a bit of it. There is a

neighbor right adjoining me. I saw several big stumps that he burned out there, right on both sides of me last winter, burned out those big stumps. After he got fire, all he did was to keep that covered up, and the fire did the work itself.

Q. Isn't it a pretty big job to set fire to one of these big fir stumps and to keep it going?

A. No, they tell me not.

Q. You never have done any yourself?

A. No, what I did I took out with a grub-hoe.

Q. Don't you use blasting powder to get these stumps out?

A. Yes, I blasted out some last winter.

Q. Haven't you seen these stumps hauled out with block and tackle and donkey engines—pulled up?

A. Yes.

Q. And make a pile as big as this courthouse, and set fire to it?

A. I shot 120 of the large stumps last winter with about $12.00 worth of powder.

Q. How long were you at it?

A. Just about two days.

Q. Did you estimate the cost of clearing an acre of this land that stands as that saw-timber does?

A. No, we were just shooting out those stumps around in what I had cleared.

Q. Don't you think it would cost from $50 to $100 an acre, if a man had to count in labor and material, and hire it all done?

A. It might cost him $200, some fellows, the way they manage. Others would do it lots cheaper.

Q. I mean a prudent, practical man, don't you think it would cost him $50 to $100 an acre to clear these timber-lands?

A. That depends, you know, on how you go at it.

Q. Well, wouldn't that be a fair price?

A. Well, I expect it would. But then, when that is cleared up, probably that land, after it is cleared up, they would charge you $500 or $600 an acre for it.

Q. Well, do you think it would be worth $500 or $600 an acre away up there twelve miles east of Scio?

A. What is the difference? If we have got a railroad out there, we can ship our stuff into the markets just as good as you can out here.

Q. Don't argue, Mr. Clark.

A. Yes.

Q. You haven't got a railroad there yet?

A. Well, we are going to have sometime. We live in hopes.

Q. I understand; but you are comparing that land without a railroad with land here at Fairview, twelve miles east of Portland?

A. Yes, sir.

Q. A city of 275,000 people, aren't you?

A. Yes, sir.

Q. And you find that land out here at Fairview, twelve miles east of Portland, in the woods, is worth $400 or $500 an acre, today, and you think that that land twelve miles east of Scio, up there in the mountains, would be worth $400 or $500 an acre some time, or when you get a railroad, after it is cleared?

A. Yes; they are selling the land right close to this area for $150 an acre.

Q. That is already cleared?

A. Yes.

Q. Desirable lands? Not in large quantities, are they?

A. Well, a man had eighty acres, and he refused to take that for the rest of it. Part of it was in brush.

Q. He refused to take $12,000 for eighty acres?

A. Yes, sir.

Q. Any timber on it?

A. Some of it has a little timber on it.

Whereupon, on re-direct examination, witness testified:

Q. Just one final question, Mr. Clark: In testifying as to the availability of this land for settlement purposes, have you taken into consideration the cost and difficulties of removing the stumps after the timber has been removed?

A. Nothing only that, that I told you about. That is all that I have blasted out. The rest I have grubbed out by hand.

Q. What I mean is this: In your general testimony have you taken into consideration, in testifying that this land would be available to a settler, have you taken into consideration the difficulties and the expense that a settler would have to encounter in removing the stumps?

A. No, I don't know as I could tell you that, because there is some acres, you know, that is much easier cleared than others. Maybe you will strike a patch of ground, suppose there is ten acres, of one acre that might cost as much as all the rest. I don't know how you would estimate it.

Q. Well, upon the general question as to which your testimony will be considered by the court, what have you to say as to whether this land is good land for a settler, considering the condition of the soil, the character of the soil, the climatic conditions, and also the cost of removing the stumps after the timber is removed? Have you considered all of those elements in saying that the land could be used by settlers, and that the land could be settled up?

A. Yes; it could.

Q. That is your best judgment?

A. Yes, sir.

Whereupon C. S. JACKSON, called as a witness on behalf of complainant being duly sworn testified that he resides at Roseburg, Oregon, and was born and raised

in Douglas County forty-five years ago and has lived there ever since, excepting a short time when he was away to college for two or three years. He was in the Leland Stanford University three years and in the University of Denver, Colorado, one year, and is by profession an attorney at law and engaged in active practice at the present time and located at Roseburg. He was born two miles east of Canyonville twenty-seven miles south of Roseburg on a farm. Canyonville is six miles off of the Oregon and California Railroad in township 30 south, range 5 west. His father settled there in 1853 on 160 acres of land he thinks. He was there in time but did not get it under the donation act. He entered the land under a public land law he thinks he took a homestead and then he took in addition adjoining that some pre-emptions also. He owned in all about 500 acres and the land was agricultural, a portion of it was timber land originally. The part of the land that was cleared and reduced to cultivation was the ordinary land there that they called the timber lands. There was about one-third of his father's place plow land. He remembers he helped clear a great deal of it himself during his younger days. The balance of it was clear when his father took it, about two-thirds of it was clear when his father took it, and the balance of it was cleared, and there is a large amount of it yet uncleared that is good agricultural land of the total five hundred acres. The timber there ranged from brush up to six or seven foot stuff. Lots of it was saw timber. His father sawed it and floated it down the river to a mill there was below there. His father made a wind-

lass grubbing machine, they called it, to clear the land. It was a capstan with a large windlass on it, and he used a two-inch rope and span of horses. They could pull out very large trees with that. Some of the logs were sold and some of them they had to burn on account of the mills not being near enough. They had to burn a good deal of the timber. The clearing was done through a period of several years. They were still clearing, he thinks, when he left the farm twenty-three or twenty-four years ago. The soil there was splendid. It is the same as all of the upland soils there in Douglas County. There are two classes of soil there, there is river bottom soil and what they call upland soils, the river bottom soil is the best, the better of the two. The upland soil grows all kinds of crops, all kinds that this zone would produce, that includes fruit, the very finest grows on the uplands. Many acres of orchards there now are put on the uplands. The upland fruit is a little better in flavor, but usually not quite so large in size. The river bottom lands are very productive and are richer than the upland lands in their natural state. River bottom land is better producing land. He has been all over Douglas County, thousands of times almost, he would say hundreds of times, and over adjoining portions of Douglas County, north, south, east and west, and referring to "Defendants' Exhibit 266" and starting in at township 30 south, range 5 west where he used to live, he has been in the mountains practically all over those townships from the head of Wolf Creek and Evans Creek in Josephine and Jackson Counties clear to the Crater Lake country, clear to the summit of the Cas-

cades south of Crater Lake and then north from there, from Crater Lake as far north as Mount Thielsen they call it, it used to be called Diamond Peak, and he has been from there down all the forks of the Umpqua River, from there to the mouth of the Umpqua where it flows into the Pacific Ocean and all over the tributary of Cow Creek to the summit of the Coast Range mountains, and north to the divide between the Willamette and the Umpqua Valley. He has been all over the watershed of the Umpqua. He has not had any farming experience since he left the farm twenty-two or twenty-three years ago, excepting when he went back to the farm during the summer seasons, occasionally he would go back to the farm—not to make it a business. He has not done any farming on his own account since then. His father is still living at Canyonville, he has got too old to live on the place and has moved over into town, he is nearly eighty years old now, he moved into town about ten years ago. The old farm is still producing. His father sold the farm. He thinks there is something like four, three families anyway, now living on it. The land in that locality is all of the same quality of land for several townships around where his father used to live. The character of the land there, a portion of it is similar to the general character of all the land through Douglas County. His father's land runs from the rolling hills down to the river bank, some of it is level and some of it is rolling, being part of the hills there and opened up to the outside range and his father always kept cattle there all the time he had been there, over all those outside ranges, a good

many acres of railroad land he had used there for years and years, two townships he thinks laying back of him between that and Myrtle Creek that was always open range, timber and brush, the same as what his father had. He knows in a general way where the railroad lands are situated in Douglas County which are involved in this suit and referring to "Defendants' Exhibit 266" that substantially represents the present holdings of the Railroad Company which the Government claims has been forfeited and he has a map like that which the Company furnished to him, that is, he called it a quadrant with a quadrangle for Douglas County. The even numbered sections which intervene these railroad lands are all settled, practically all settled now. They are either settled on or owned by people who are not living on them, they are practically all taken. The title has all passed and the settlers are all over them everywhere. He would almost say that there is a settler to nearly every even section, there would not be a settler for every quarter section. He knows some of those lands are held in large blocks by timber companies and knows there are a number of large holdings of that kind. The Smith people have lands and two or three other large companies all in that county there have lands. He should have said that the settlers would average more than one settler to every section. The settlers are farming and using the lands the best way they can, farming what they can of it and pasturing what they can of it. He knows that there is railroad land settled on, quite a few settling on railroad lands and have been there for years and years, farm-

ing it and using it. He has had clients who have been on railroad lands, who are there yet, the company has tried to oust them, some of them they have ousted and got them under contract with the company, or something of that sort, a good many of them have held their lands and are still holding them, without the consent of the company and they are cultivating the lands. He would say that seventy-five to eighty per cent of these railroad lands in Douglas County with which he is familiar could in his judgment be cultivated successfully, and will be some day. A settler does not have to have 160 acres of plow land in order to maintain himself and his family. He knows people there who are making a good living where they do not have more than three or four acres of plow land cleared and using, four or five acres will produce them hay for their horses and cow and they have their chickens and a few head of stock ranging in the mountains, none of it is fenced there. The Oregon laws do not require them to keep stock on their own lands, and they let them run at large, and everybody gets the benefit of all the outcountry and they all use it.

Whereupon witness testified:

Q. Well, taking into consideration all of those conditions, and the character of the soil, the uses that can be made of it, the quantity and quality of crops, both agricultural and horticultural, that can be grown on the lands, and taking also into consideration the amount of plow land that a settler has to have in order to maintain himself and his family, I will ask you to state, in your judgment, what percentage of the quarter sections of

these railroad lands, if disposed of and properly handled, would support a settler and his family?

A. On account of the general lay of the country, there being hills and valleys everywhere, there is hardly a quarter section but what some portion of it will extend down on to the leveler portions and furnish sufficient level land to build him a home upon and clear up for his own use. Some portions of it has cliffs of rock, for instance, that would prevent its use for most any purpose except the mineral that is found there. Those portions would not be suitable for agriculture nor farming, that is, plowing; but most of those rocky mountains that are found here and there have grass growing on them, and stock range on them, and they furnish a large supply of feed for domestic animals.

Whereupon witness testified that dairying can be profitably carried on in that country and would be a success there and is carried on to some extent. He has been there for forty-five years and knows almost every development that has been carried on in that county and is familiar generally with the industrial resources of that country and the history of the development of those resources down to the present time, and is familiar in a general way with the methods the Railroad Company has used with reference to its granted lands in that county, including the former disposition of them, down to about 1903, and then the withdrawal and withholding of the lands by the railroad company since the latter date and is familiar in a general way with the sale of

those lands in large tracts by the railroad company between the years 1894 and 1903. He knew that was their system at that time.

Whereupon witness testified:

Q. I will ask you, Mr. Jackson, whether in your judgment the methods that have been pursued by the railroad company, and the policy that has been observed by it with reference to these lands, has promoted or retarded the industrial development and settlement of that county.

A. It is a very serious handicap to the development of all Southern Oregon; not only Douglas County, but all Southern Oregon.

Q. Has that effect upon development been limited to the odd numbered sections themselves held by the railroad company at the present time, involved in this suit, or has it extended to the even numbered sections?

A. Yes, it has extended to the even numbered sections, and even goes farther than that. The mineral interests are suffering, and the tax question there has become quite prominent. The railroad company this year, I think, paid something like $103,000 on the railroad lands. That must necessarily be charged up to the expense of transportation, and we suffer from excessive rates, or greater rates than we should pay, because that is no part of the carrier's business.

Q. These lands that were sold by the railroad company in large tracts or large areas, between the years

1894 and 1903, state whether those lands are still held in large tracts or not, speaking generally now.

A. Yes.

Q. Now, explain to the court why the holding of these railroad lands in alternate sections by the railroad company, or by its large purchasers has affected the development of that county, not only the odd numbered sections themselves, but the intervening lands.

A. It isolates settlers, and because of their isolation they are denied the social developments that naturally belong to settlers, such as schools and churches and roads and highways. Every alternate section being under the control of the defendants prevents developments there, and many instances where settlers have gone in there, and because of those great drawbacks many of them leave their homes, and people with scrip will take them, or they will remain undeveloped.

Q. I will ask you whether, in your judgment, if those lands should be disposed of in 160-acre tracts to settlers, that is, if they should be offered in 160-acre tracts to settlers, whether that country down there could and would be settled up.

A. I believe that every quarter section would be taken within a few years and developed, made a home for a family.

Q. In making that statement, and in the making of your other statements with reference to these lands and the uses that can be made of them, have you taken into

consideration the question of clearing the lands?

A. Yes. Of course, the speed or progress of the settlement would be retarded as the development of the country in general would go forward. Becoming very thickly settled, the demand for homes becoming greater, would cause people, and the price of land increasing, would cause the settlers to take less and less desirable pieces; of course, the first settlers taking the best.

Q. Now, would it be necessary for the settler to find a market for the timber in order to clear the land, or a sufficient part thereof for the purpose of his use?

A. No. He could probably, under the present circumstances, market a portion of what he would take off the lands that he cleared. The remainder of it he would have to burn up. But he would not have to clear his entire holding to enable him to live.

Q. Do you know of instances where settlers are living on lands adjoining these railroad lands, and of the same character, and are maintaining themselves?

A. Many of them.

Q. In addition to what you have already testified to, do you know of any instances where settlers have attempted to buy these lands from the railroad company, and have been refused?

A. Yes, sir.

Q. To what extent? Give the court the benefit of your information upon that subject.

A. Well, in the course of my line of business I have

had a great many inquiries about the purchase of that where they have been turned down, and wanted to know whether there was any way by which they could secure the lands. A good many of these inquiries have been from men who are now on the lands, and a large number of them have been those who contemplate trying to get the lands; and they have all been refused since 1908, I think. Mr.—what's his name? McAllaster, I believe is their land agent—he usually writes to them,—they bring the letters in—that the lands have been withdrawn and will not be offered; and then since this suit has begun the letters also contain the additional statement that they cannot sell until the suit is disposed of, or words to that effect. There is a great clamor to get hold of these railroad lands by people who want to make homes on them.

Q. Now, is that limited to people who are trying to get them at $2.50 an acre?

A. I have had clients state that they would not necessarily confine the company to their price, that they would be willing even to give more in some instances, but usually they want to pay the $2.50.

Q. Now, did these instances occur, all of them, since this controversy arose, or did you have similar experiences prior to that time?

A. Since 1908, the withdrawal of the lands, the applications have been coming right along, clientage consulting about it right along. Prior to that we conducted a good many sales with the company.

Whereupon, on cross examination, witness testified

that his father's place was two miles from Canyonville, and he thinks that he and his brother acquired that from the United States as a homestead. He settled there in 1853 and then took some cash entries adjoining. He thinks he took his homestead when he went there, shortly after he went there. He and Gazley and Fullerton went in together, and his father took that about 1854 or 1855 when he was only about nineteen or twenty, he went there and squatted on it and took it. Witness would not say that he took that under the homestead act, he does not know that the homestead act was in effect at that time, his father got it under the land laws just the same. He thinks the homestead act came later. The first donation act of 640 acres was in effect and then that was reduced to 320 acres. He does not think the donation act was then passed but he thinks the 640 acre act was disposed of about 1853 and changed to 320 acres. His mind is not clear as to the exact dates of that. The pre-emption act had been in effect, he thinks, for a long time. He thinks the 160 acre homestead act was along about some time in 1860, but the donation act was trimmed down to 320 acres and 160 acres to an unmarried man. He does not know whether his father took the 160 acres as a donation, or just held on there until he got the homestead. He could not say as to that. He is not sure whether his father took it under the donation act or whether he just held it there, it was not hard to hold in those days. The rest of it his father took up about the same time under cash entries, he thinks all of it and had patents to five hundred odd acres, and when his father got his patents

to these lands very close to two-thirds of it was clear in its natural state. A good deal of the cleared portion lay on the river, the South Umpqua, and the part that was not cleared was back on the foothills, he cleared some of the bottom lands too. He could not say when his father sold these lands but it must have been ten or more years ago, he could not say about what he got on an average an acre for it, he could not say what he did get. The present owner he thinks paid a few years ago something like $10,000 for about 500 acres, but they are now worth a great deal more. He thinks the lands changed hands a time or two after his father sold them. Canyonville is a little old town on the old stage road and has about two or three hundred people, something like that. There is some mining around there, placer mining and quartz both. There is one quartz mine, it might be called a mine undeveloped, within one hundred yards of the city limits. Canyonville is six miles east of Riddle. Referring to "Defendants' Exhibit 259" there are no railroad lands in the valley around the South Umpqua in the vicinity of Canyonville, most of that land was taken before the right to the grant attached. The lands, the low country there, the Umpqua River does not furnish the only valley, there are little valleys up all those tributaries of the river, and they run from that back on the hills gradually in most instances, in some places they are precipitous. He would say that of these railroad lands with which he is familiar in Douglas County outside of the part that is naturally clear they would consist of brush and timber. He could not say definitely that Douglas County is one

of the best saw timber counties in western Oregon, Lane County has a great deal of saw timber, Douglas has a great deal of saw timber but it is splendid land, all good soil. The soil in Douglas County is different from what it is in Jackson county. He would say that there is a great deal of poor timber on these railroad lands in Douglas County. One can find good timber, that is he would call it good, although he is not an expert on timber. There is some good timber.

Whereupon witness testified:

Q. Now, Mr. Jackson, you say that you have represented a good many applicants to purchase these railroad lands. Do you refer to about five thousand applicants that made application through Mr. Leavengood, in Douglas County, to purchase these lands under the act of April 10, 1869, at $2.50 an acre, that sent out these printed blanks, which were signed by people from all over the United States, and made what they called written tenders, and demanded a convyance from the railroad company? Do you refer to those?

A. No, I never had anything to do with those.

Q. About how many applications have you had for the purchase of these railroad lands that have been transmitted to the company since 1908?

A. Oh, I couldn't say.

Q. Well, has there been as many as a dozen?

A. Oh yes, more. Oh, you mean that have been transmitted?

Q. Yes.

A. Possibly not more than that.

Q. Can you name the list of the persons whose applications you transmitted?

A. No, I could not.

Q. Could you name any of them?

A. Let's see. I wrote to the company for a fellow by the name of Kent I know.

Q. When?

A. He has got some of your railroad land fenced in too, and has had it for twenty years.

Q. When?

A. That must have been a couple of years ago possibly.

Q. Now, name anyone else.

A. I think a fellow by the name of Bolsinger. I wrote in his interest once, I think.

Q. Did you sign your own name as his attorney?

A. I usually did. Sometimes I wrote letters for them.

Q. Did you address them to the San Francisco office?

A. All the correspondence was done through the office there I think.

Q. All the correspondence was done with Mr. McAllaster?

A. Whatever was done was done with the present man, I think.

Q. Mr. McAllaster?

A. That is what you have reference to?

Q. Yes, that is what I mean. Now, can you name any others? You have named two.

A. Well, recently I think there has been one or two.

Q. Can you name them?

A. I am poor at remembering names.

Q. Now, what did these applicants offer to pay, $2.50 an acre

A. That was usually their desire, to pay the government price.

Q. Did they claim under the act of April 10, 1869?

A. Well, they seemed to. Now, the recent applicants seemed to be pretty well advised on this suit, and the price, etc., and they come in with that expectation of getting it.

Q. I mean since 1903 have they all asked under this act that have come through your office—the act of April 10, 1869?

A. You refer to the land grant act?

Q. Yes.

A. Yes, they wanted to get it under that act.

Q. All of them since 1903 that you have handled?

A. They wanted to take it, yes. They wanted to take it. I have advised them all the time—some of them have come and asked advice about taking it without consulting the railroad company—in most instances I have advised them to take it under the rules of the company.

Q. Well, to demand the price under the railroad act?

A. Just told them that, yes.

Q. That is under the $2.50 an acre?

A. Under the rules that the company were selling them under.

Q. That is, the ten-year proposition?

A. Yes, or cash either one, whichever they wished to pay.

Q. I understand. And as early as 1903 you knew, didn't you, of this proviso in the act of April 10, 1869, which attempts to amend the act of July 25, 1866, being the land grant act involving these lands and attempting to limit the amount that could be sold to 160 acres, and attempting to name the purchaser as an actual settler? You knew of that?

A. I knew there was an amendment there, but the effect of it I couldn't call to mind right now, because I have not examined it recently.

Q. Well, that is one thing we are trying to find out in this suit, is the effect of it.

A. Yes.

Q. But you knew of that statute? I mean, the lawyers knew of that generally?

A. Yes.

Q. In Southern Oregon, didn't they?

A. Yes, my attention was called to it when I tried to get this wagon road grant, when I was in the legislature in 1907 there.

Q. Well, but long before that, this question of $2.50 an acre to actual settlers was a matter of discussion among lawyers in southern Oregon, particularly in Jackson County, Josephine County and Douglas County, wasn't it?

A. In what respect, Mr. Fenton?

Q. As to the $2.50 an acre proposition, and the sale to actual settlers only, and in quantities not to exceed 160 acres?

A. As to whether that was compulsory or not?

Q. No, as to whether it was known. Didn't lawyers know of it and discuss it?

A. I think the lawyers knew of it; that is, those that had any work along that line knew of it.

Q. Nearly all of the lawyers in southern Oregon that had any practice at all had some knowledge of the public land laws and had some business in that direction?

A. Well, quite a few of them don't yet know about

that, because they have been asking me about it.

Q. Well, couldn't they find out from you?

A. I usually gave them my citations, where they could go and find the laws.

Q. Well, Judge Watson, E. B. Watson, former justice of the Supreme Court, raised that question in 1896 in the tax case in Jackson County, didn't he?

A. As to the taxing of railroad land?

Q. Yes.

A. There was a suit down there. I don't know who raised it.

Q. Well, didn't you know that that was discussed by him in one of his briefs in that case?

A. I am not very familiar with the case, although I understood that. I did not see his brief, no.

Q. Well, didn't you know that? You knew of that $2.50 an acre provision as early as 1896, didn't you, or before it?

A. Yes, I knew it was in there myself.

Q. Well, now, the lawyers generally knew of it, didn't they?

A. Well, I couldn't say as to that, Mr. Fenton. I don't think they did generally.

Q. How did you get your knowledge of that?

A. Well, I got pulled into that litigation pretty early.

Q. What litigation do you refer to?

A. I don't call it litigation really, but contentions for these lands. I had occasion to examine it.

Q. You had some business in the local land office, didn't you?

A. I have a little, yes.

Q. Ever since you have been practicing?

A. Yes.

Q. How long since you have been practicing law, Mr. Jackson?

A. Since 1898.

Q. Were you in the county clerk's office for a while?

A. Just a year.

Q. When was that?

A. 1898.

Q. And at that time you knew of this statute?

A. Well, I couldn't say that I did, no.

Q. How soon after you left the clerk's office?

A. It wasn't long after I got into practice when these contentions arose.

Q. Who first brought it to your attention?

A. I couldn't say. The Matthews up there had a contract from the railroad company for 320 acres, and I carried that along for three or four years. I think the company finally deeded it to them. They got a

deed to that. The contract was lost. But then it was earlier than that that I got in.

Q. That you knew of this $2.50 an acre provision?

A. Yes, I knew of it earlier than that.

Q. Now, you said, I think, that there was a good deal of clamor about the sale of these lands. When was that clamor—how early?

A. Well, of course it all arose, that is, most of it arose since the withdrawal.

Q. Since 1903?

A. Yes. Before that we had some difficulty on railroad or on mineral lands. I know father tried to purchase some from the company, and he didn't get it. They wanted thirty or forty or fifty dollars an acre—I don't know what it was.

Q. He didn't claim it though under the $2.50 an acre clause?

A. Well, no. He claimed it under that, but he was willing to give more even than that for it.

Q. Your father then knew of this $2.50 an acre clause?

A. Oh, no doubt he did. I guess he did. He did at that time I know.

Q. That was long before 1903?

A. Yes, that was before 1903.

Q. Now, this clamor that you speak of originated

after the company, as you say, withdrew the lands from general sale about 1903, as you recollect it?

A. Yes, the talk for the lands, or the applications made for them increased in numbers after that.

Q. About when did timber lands become an object of considerable inquiry and location under the timber and stone act, and under the homestead act, out there in Douglas County, and under scrip—anyway they could get it?

A. Well, do you mean when the greatest rush came for them?

Q. Yes.

A. That was about from 1900 to 1904 or 1905.

Q. It began about 1900?

A. Right along there somewhere, as near as my memory serves me.

He does not think that the railroad was built through Douglas County about 1878. He thinks it ranged from 1881 to 1885 when the line of definite location was established. If the record shows it was 1878 he would be wrong, but he does not think the record shows it. He would not say that for fifteen years after that time these lands had no particular value or that there was no particular inquiry for sale. The inquiries for sales were not as great then, he supposes because of the lack of influx of settlers. There was a demand for timber, but then timber closer to transportation was used first for domestic and ordinary local use, the question of

speculation was not as strong then as it was later. He could not say that there was not any speculative investment for timber in 1878, he does not say there was, he could not say he had any knowledge at that time. He does not remember that he ever put in an application to purchase any of these timber lands from the Railroad Company for himself. He filed on a homestead on lands in Douglas County, but he has not proved up yet. He took a squatter's claim off of his father's ranch once, but never proved up on that. That was when he had just about reached his majority, or a little before that. He did not prove up on that because he thought he could do better, and he went off to school. Some one took it afterwards and it is patented now. It was not a great while afterwards that some one took it, and it is taken all over that country now where they used to run cattle. The country is still open, further up the Umpqua and into the mountains, they run stock up into the mountains. He can tell of a settler on these railroad lands living there, Maccabee, with whom counsel for the Company has probably had some correspondence there about his claim. Maccabee is on Day's creek, but witness does not remember how many acres he claims but he and his predecessor have been there, he does not know how long, but they have been there a good many years. He thinks Maccabee was there before the definite line of location, and claims the lands as his own. He knows of railroad lands that are under fence by people who live on deeded land. This that is under fence is probably there under a claim of these people. Some of

them claim it is their land under the statute of limitations and others, he thinks, have stayed there where the Railroad Company has gone and got them to lease it from them, under their lease system now. He had clients with whom they have done that. He knew some people who had gone and taken a quarter section of this railroad land, jumped it and are claiming it. Very few of them have stuck. He has forgotten their names, He could not say as to whether these people had applied there through Leavengood and posted notices on these quarter sections generally, he was not advised at all on that. He does not think many of those people settled. He understands that a good many of those people were largely non-residents but he is not advised on that. He does not know Leavengood's system or anything about it, but he understood that he had a system and that he worked it pretty industriously. Personally he never had any litigation with the Company, he has had claim clients and timber claim clients and things like that and had a case against the Company involving the township site of Roseburg, that was the case of Johnson against Wollenborg, he believes that was the case which involved what is claimed to be the south half of the donation land claim of Aaron Rose and wife and covered a part of the town of Roseburg only and upon which part of the depot grounds of the Oregon and California Railroad Company are located, practically part of the grounds and he sued about three or four hundred people there in that suit. That suit went to the Supreme Court, it was a suit in equity for

partition. The Supreme Court held that partition was not a proper remedy. There is an ejectment action pending now against the Cobb Real Estate Company he thinks it is called but there was no ejectment yet as to any others. This Courtney Chauncey was a nephew of Mrs. Rose, Mrs. Aaron Rose the donation claimant, this land had not been occupied and claimed by these people who are now in possession, there is a scattering piece here and there, a scattering lot here and there, which has been held for a great many years. This tract has been laid out as a town in more recent years, the town has branched out in that direction, but he does not think that the town has been laid out in there, any on this part of it as long as thirty years.

"Q. Well now you have had some other controversies in which the railroad company was interested, haven't you?

A. Yes.

Q. You were interested in these and a witness in one of these freight rate cases weren't you, down at Salem?

A. No, well I did appear as a witness. I appeared more on behalf of the citizens of Douglas County there in that instance. They put me on the witness stand after I got there.

Q. The citizens of Douglas County used you as a witness?

A. They sent me down there to look after their

interests and the commission called me after I got there as a witness.

Q. But you told them you would testify as a witness didn't you?

A. No, they knew what I knew.

Q. I see, and they put you on the witness stand?

A. Yes.

Q. Simply to put it in the record?

A. I suppose so, yes."

He does not remember what that case was but thinks it was a case on class rates south out of Portland, distributive class rates out of Portland, involving merchandise but he is not sure. He thinks that was a case involving the first four classes principally, as he remembers it. He is not a merchant, has never been one, he is not a cruiser and has never been and never bought and sold timber lands as such, never farmed since he left his father's place and went to school excepting at the short intervals that he would come back to help his father until he got through college, university. He has not farmed since he graduated and does not own a farm and is not interested in the farm any more than a citizen would be. He owns some mining land in Jackson County up in Star Valley. The Railroad Company has some mining lands there that they have got to give up one of these days right adjoining his, but he is not interested in that only as an attorney. The Railroad Company got a patent passed on that particular piece that he has in

view now and if the Company does not deed it over, or dispose of it in some way to his clients he expects to bring suit to cancel that patent.

Whereupon witness testified:

Q. Well, all of your interests have been adverse to the company as a professional man, and also as a man interested in mining, haven't they?

A. I have never been fortunate enough, if you mean that, to be attorney for the railroad company, and therefore my position has always been on the opposite side.

Q. Well, if you were attorney for the railroad company you might not have been able to go to the legislature like you did go. Isn't that true?

A. Well, I don't know about that, Mr. Fenton.

Q. When were you in the legislature?

A. I was there, I think it was the 24th legislative assembly, the time the railroad commission bill was passed.

Q. 1907?

A. Yes.

Q. Well, were you a member afterwards?

A. No.

Q. And never before?

A. Never before.

Q. Have you been a candidate for public office?

A. I ran for the nomination for state senator fol-

lowing that, but Mr. Abraham succeeded me by twelve votes.

Q. Albert Abraham?

A. Yes, sir.

Whereupon witness testified that they were both members of the same party and were running for the nomination. A good deal of that land can be plowed in its natural state where there is no timber. Where there is timber it would have to be cleared, of course, but it could be plowed. One can plow and raise stuff among the trees. One can raise more stuff if one would take all the trees off of it.

Whereupon witness testified:

Q. Well, if you had a quarter section that cruised ten million feet of saw timber, you wouldn't be able to plow much on that quarter section, would you, without the timber was taken off?

A. Sometimes that amount of timber will be on one fourth of it, and the rest of it will be good.

Q. Well, where is there a forty that has, we will say, two and a half million feet on it of saw timber?

A. Some of it runs as high as twenty million to the 160.

Q. It does in that county?

A. I presume that some of it right on the Coast Range, yes, in Douglas. It might be over in Coos County, but it is very close.

Q. And it is of the same general character?

A. Well, the timber over there is a little better than it is in the interior.

Q. Run as high as twenty million feet to the quarter?

A. Once in a while they have timber there as much as twenty million feet to the quarter.

Q. Well, what would that be worth according to the prices that have obtained in that county?

A. In Douglas?

Q. Yes. What would a quarter section that had twenty million feet of timber on be worth? As an investment, I mean.

A. Well, it is running there now from 25 to 50 cents a thousand, but the land is worth much more than that.

Q. Oh, I suppose the land is worth two or three times as much as the timber, in your judgment?

A. The land will be there forever, Mr. Fenton, but you only get once the timber. That is my view of that idea.

Q. That is the reason you put these values so high on the agricultural portion of it? That is your idea about it?

A. I think the agricultural part outside of the timber is worth very much more than all the timber combined.

Q. Well now, if there was a quarter section of land there that had ten million feet of timber on it, and was tributary to the Umpqua river, where it could be logged so that they could have transportation, that would be worth a dollar a thousand today, wouldn't it?

A. I don't think there is any selling for a dollar a thousand, or very little.

Q. Do you know of that because it is held in strong hands, and they do not want to sell at that price?

A. No, they are trying to buy at less and are buying at less.

Q. And keeping what they have got?

A. The fellows that are able to are, I think.

Q. That would bring a quarter section up to about ten thousand dollars? Don't you know of timber quarters out there that have sold for ten thousand dollars?

A. No, not in Douglas.

Q. How high are the highest you have known of quarters selling?

A. That is governed, Mr. Fenton, by the kind of timber and the location.

Q. I mean the best that you know of that has been sold.

A. Yes. As I say, they are selling now, what are selling are selling from 25 to 50 cents.

Q. Well, there are not very many selling, are there?

A. Once in a while they are picking them up right now, and for the last six months they have been pretty active. But it is largely men that are representing these large timber interests.

Q. They are picking up all they can?

A. They are picking up all they can.

Q. At the best price they can get?

A. Yes. Ranging in price. And that country, all you have got to do is to look at the logged-off country down from the Calapooia gulch there, where your railroad runs, to see that it will all be agricultural land.

Q. Yes, I have been there and have seen that agricultural land that you speak of. Cow Creek canyon is a fine agricultural territory, isn't it?

A. Just after you get up off that steep hill, there is level territory up there.

Q. Nice agricultural country all along the railroad through the Cow Creek canyon?

Whereupon, on re-direct examination, witness testified that Cow Creek Canyon from bluff to bluff, from what is always known as the old George Riddle place through to four miles below Glendale is a gorge. The Railroad Company has followed the stream up through the gorge. The gorge puts right down to the creek almost continuously there for the distance of the Cow Creek Canyon. He does not know just how far it is, something like thirty miles through the Cow Creek Canyon and its width varies. There are a few scattering

ranches on the creek along up through there, but when one gets back on to the hills, gets up the first steep place out of the gorge, there are other little creeks coming in cutting through it and the country flattens out and widens out, and it is a good country through there for grazing and a good many homesteaders scattered all through there. He does not believe the gorge would be a mile wide at any place, meaning from the slope of the hill across.

Whereupon the witness was recalled by complainant and on re-direct examination testified:

Q. Mr. Jackson, there has been some testimony in this case, not only with reference to Douglas County, but other counties, to the effect that a great many homesteaders have proven up, received their patents, and sold to large timber companies. I will ask you whether, in your judgment, from your knowledge of the general history of the subject there in your own county, that condition would have taken place if these lands had not been sold in alternate sections covering large areas to timber companies, and the railroad company had not withdrawn its present holdings from sale; would the settler have been driven to that?

A. I know of some complaint involving that situation, and it is causing settlers to become discouraged, and some of them are leaving, selling out, those that have got rights, and others that haven't got rights are abandoning them.

Q. Now, when the settler becomes discouraged in

the manner that you have testified, I will ask you whether, with the alternate odd sections there held permanently either by the railroad company or by these large timber holders—whether the settler can find any purchaser except the large timber company which holds the intervening odd numbered sections?

A. It seems that these large timber holders, not only have gathered up a good deal of the public lands there, but before the withdrawal they had secured large tracts from the railroad company, and they not only hold the government sections, but the odd sections too, because of the sale by the railroad company in some instances to them before the withdrawal; and where those conditions prevail the settler is practically up against it, as the fellow says in plain, modern terms, and is almost forced to leave. He is isolated entirely.

Q. Well, what chance has he to sell to anyone except the large timber holder who owns the intervening alternate sections?

A. Our experience there now is that the timber interests are sort of dividing the territory and not competing against themselves for the purchase of the small holder, and he is practically at the mercy of the one man that is operating in that particular territory where the settler might be.

Q. Well now, in your judgment, does the fact that the homesteader under those circumstances is compelled to sell to the large timber holder—does that fact, I say, in your judgment, indicate that the lands could not and

would not be settled up if they were all open to settlement?

A. If these unfavorable conditions mentioned were relieved, of course there would be a greater incentive for the settler, and there would be more settling, and the settler would be more liable to remain and develop the country into an agricultural producing country.

Whereupon E. J. MAHAN, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Ashland, Jackson County, Oregon, and has lived in that county for twenty-three years. He was nine years old when he came into the county. His father was living then, but his mother was dead when his father moved to Oregon from California, where he lived about twenty-five years. His father settled in Jackson County, on a piece of unsurveyed land, two miles west of Ashland, from the post office, on a direct line it is not over a mile or mile and a quarter—in section 17, township 39 south, range 1 east, he believes this land was surveyed somewhere along about 1905. He remembers when the surveyors were there doing the work, because they camped at their place and he helped do the cooking, used to cook for them. His father went on that place on Christmas day, 1887, packed up on pack mules, and stayed there and made his home till his death a year ago this fall. He lived here with his father from the fall of 1889. His father went there in 1887, and then went back to California and got witness and his brother in the fall of 1889. His father built two houses on the place, both of which burned down, and he built

a third one. He had a barn, which is there now. Witness had the old house remodeled himself last year—built it over, and has been living there since his father's death. He is married and his wife is living there now with their baby. His father settled on 160 acres there. When it was surveyed, the railroad company claimed it, and there was a contest between his father and the company, which was decided in his father's favor in the local land office at Roseburg, and his father said it was a matter of record in the Roseburg land office there. The way he understood it, the railroad company appealed to the Department at Washington while Binger Hermann was in office, and Hermann ruled against his father on 120 acres, and that is the way his father explained it to him; so that his father finally got 40 acres and the railroad company 120 acres of the 160 acres his father settled upon, and the 120 acres is involved in this suit, being the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section 17, township 39 south, range 1 east. It is good land, good soil, and has good timber on it—it is number one land, most all suitable for cultivation when the timber is cut off and it is cleared. His father cleared about 20 acres on the 40 acre tract, and they still retain it. Part of the clearing was on this other land, and some of it he originally had in cultivation, and when he lost it he let it grow up in brush, quite a lot that they had cleared. This photograph shows the land there, and there is the barn his father built, and there is the house that he remodeled. This house is within fifty yards of

the line. This 120 acres lost, lays right back of the house there, and part of it is fenced, and part of it is under cultivation too—witness referring to a photograph which he produces, marked "Government's Exhibit 124," which was offered and received in evidence and is hereinafter set out and described in this Statement of the which he produces, marked "Government's Exhibit 124,"

Whereupon witness testified that he had also built a road to that property, his father, himself and brother built a road there that cost three thousand dollars, which cannot be built today for that. The altitude of that house is thirty-four or thirty-five hundred feet, and he would take that to be about an average altitude of the railroad land in that locality, sections 17 and 19, and all the land with which he is familiar there. His father set out an orchard on it and raised garden and berries, and improved it. When he went there it was thick brush and timber, big stumps. On about twenty acres they had taken out all the stamps and cleared it up and improved it, brush that one could not crawl through when they went there. Apples do not grow better anywhere than there, he picked off of trees his father set out there—now they had been neglected while his father was sick and could not attend to them, and had not been sprayed or pruned—and this spring he cultivated the orchard and pruned them, and he got thirty boxes of as nice apples as one ever saw. The fruit inspector was up there, and he asked him to stop and examine the trees, he was on a hunting trip by the place, and saw them, and the inspector claimed that that land some day was

bound to be the best apple land in the country, giving his reasons, he said that the codling moths and the insects would not bother, at that altitude as they do in the valley on the lower lands. He is familiar in a general way with the other railroad land in that township, and has been over it, ever since he was a boy, since he was nine years old. Their stock ranged over it, and they used to go out after their horses pretty nearly every day. The railroad land there in sections 19, 21, 25 and 27 is really better than this forty acres that his father got, there is better timber on the railroad land in these sections. This forty acres that his father got was the poorest forty out of the 160. He is familiar with most all of the lands west of Ashland, between Ashland creek and the Applegate, and with considerable of the railroad lands in the Dead Indian country, which is east of Ashland from ten to twenty miles. He could not say how much railroad land over there, is involved in this suit. He knows of some there, one particular piece which they call Railroad Prairie, because it is railroad land, it is nice prairie land, good grazing on it, and lays between what they call Glenwood and Lilyglen. He has been out there hunting with parties. Timber in that section he would not call extra good, the timber in that Dead Indian country, some of it, he would not call very good, there is lots of white fir and a good deal of yellow fir that is punky, but there is lots of land there and it is number one. He has hunted over nearly all the Dead Indian country, this one particular piece which they call the Railroad Prairie was about the only piece of railroad

land he could say that he was really very familiar with, in the Dead Indian country. He considers that there would be a quarter section there, or probably more, just going over it hunting. In addition to these specific tracts with which he is acquainted, he is acquainted in a general way with the lands in Jackson County, is familiar with everything, railroad and other lands, except there is a locality out east of Medford in what they call the Butte Creek country, out in there, that he cannot say he is familiar with, but he is familiar with the southwestern part of the county, very familiar with all of that. He has been over it, he could not say how frequently, probably a hundred times, hunting and after stock, ranging over it.

Q. Just step here to the map a moment. This is a map showing by this red line the location of the railroad. There is Medford, here is Jacksonville, here is Ashland, and these sections marked in black are railroad lands. These squares are sections. The squares with the heavier lines are townships. This is section 39-1 east where Ashland is located. And the township west of that, of course, is township 39, 1 west, and so on. I have been referring to Defendants' Exhibit 266. Now, are you familiar in a general way with that part of the county to which I call your attention, and where you find so many lands designated in black as railroad lands?

A. Yes, I am very familiar with all that section.

Whereupon witness testified that he believes that all of those lands are suitable for settlement, a large percentage of them, and in his judgment 160 acres of

that land, when it is cleared up, would support a settler and his family. He does not believe there is 160 in that range there but what it can be cleared up and made to support a family, and that is true with reference to the lands he knows over in the Dead Indian country. He helped his father clear this 20 acres that was cleared on his place, he and his brother and his father did the work, cleared it up, it was heavily timbered when they went in there. It was not good saw timber—some of it was, but there was not enough of it to be practical for saw purposes, but it was good for wood-stove wood. He cut the timber, cleared the land and sold the wood—cleared it up, made the timber into stove wood and hauled it to Ashland and sold it, that is the way he made his living while he was clearing the place. He has taken into consideration the expense and work involved in clearing this land, when he testifies that it could be made useful for the purpose of homes and settlement. The soil in there is granite formation, there is good soil and the average—the soil of the granite all through there would average twelve or eighteen inches of leaf mold, which is formed from decayed vegetation, it is light loam soil—granite formation. There have been several homesteads proved up by settlers in that same general country there, where these railroad lands are that he has indicated on the map, and at virtually the same altitude as his land there. There are no settlers back of him, he is the only settler there in that neighborhood. Up the other road, up Widner creek to the Applegate country, there are settlers back that way,

but he and his father built this road themselves, there was no road when his father went in there, just a little Indian trail. He believes these lands would be settled at once as fast as they were thrown open, if they should be offered to settlers. Withholding these railroads lands from sale by the company has certainly retarded the settlement and development of that country, there is no doubt about it. He knows who owns some of the even numbered sections intervening these railroad lands in that southwestern part of Jackson County. He knows of two or three places, homesteads, which have been homesteaded but practically the timber is cut off, and not much improvements made on them. Some of them they have improved, some they have not, some that has been sold by the railroad company and the timber is cut off. It was bought for timber and not for settlement, it seems.

Q. After the timber is cut off, and taking that land in the condition in which land always is after it is logged off, with the stumps in the ground and the accumulation of branches and other debris resulting from logging operations, and with the smaller brush still standing, I will ask you if, in your judgment, that land would be attractive to a settler, and a settler could afford to go upon the land and clear it?

A. Yes, sir, the majority of it he could.

Q. Now, these homesteaders that have gone in there and have left there, I will ask you whether in your opinion they would have abandoned their homesteads if the

railroad lands had been thrown open to settlement and the country had been settled up, as you have described?

A. I don't think so.

Q. Well now, Mr. Mahan, just explain how the withholding of the railroad company's lands from settlement has interfered with the settlers on the even numbered sections with reference to roads and schools and other conditions of that kind?

A. Well, there is one family that I know of, a man that came there about the time my father did, he bought a man's relinquishment—people of the name of Walter, he bought their relinquishment to a homestead right. That was unsurveyed land. And he moved on it, and built him a house, and made considerable improvements; set out some fruit trees, orchards. He had a big family, he had nine or ten children—I don't know how many. But when the railroad company got this land he moved off, and this particular piece has been sold since to a man named Provost, bought it in the first place from the railroad company, I believe, and the timber has all been slashed off it, and what improvements were there have simply decayed and gone to rack; but it is bought for timber speculation more than anything, I think. It is good land. Now, for instance, if this man that cleared it had been allowed to remain there with his family and improve that, he would probably have been living there yet, and it would be a nice home.

Whereupon witness testified that he has no interest in these lands, no special interest, other than as a citizen.

He did not apply to purchase any of these lands. His father applied to the railroad company for this 120 acres that was originally in his homestead claim, probably eight or nine years ago, something like that, and the company told him it was off of the market, not for sale. He does not know what is the reason the company told him it was off the market, that is what his father told him.

Whereupon, on cross examination, witness testified that he was thirty-three years old, and his father went on this homestead on Christmas day in 1887. By their road which they built to the property, and by the survey, he has heard his father say that the surveyed road was two miles from the Ashland post office, up on the mountain. The elevation at his house is about thirty-five hundred feet, about fifteen hundred feet higher than the post office at Ashland. They built the road from Ashland out themselves, from Nutley street, where they left Nutley street in the city straight to their place, fully a mile and a half of road. He and his father and brother, who were living there at the time, built this road. It was not a county road, they built it themselves, it is still a private road, they built it at their own expense, for their own use. They have no neighbors back of them. Some land has been held back after it has been cut off for wood, but there is no one living on it. His father had a contest with the railroad company as to the whole of this 160 acres, he understood that his father's final proof was accepted, the land was unsurveyed when he settled there, and he offered final

proof after it was surveyed, and it was accepted, but his father claimed that Binger Hermann ruled against him and only allowed him forty acres out of the 160 acres. He could not say that the railroad company got a patent, but it claims that it is railroad land, his father did not get it. His father did not give up possession of it, but has retained possession of it ever since till his death, and witness is still on it himself. His father deeded his rights to witness and his brother on his death, whatever rights he had, and he claims that that 120 acres really belongs to himself and his brother, under the claim which his father made, and has been in possession of it since his father went there, in 1887, about twenty-three or twenty-four years. His father did not fence it all, but had some of it fenced, this 120 acres. He has paid no taxes on this 120 acres. His father cleared up some of it when he had it under claim, he cleared up quite a piece, he could not say how much, but it was a piece around about the house, probably a couple or three acres, something like that. His father cut the timber off of that, and most of it has grown up, some of it is enclosed in chicken yard. He is not cultivating that only a small portion of the 120 acres, just a little corner of it now. He could not say how much of this 120 acres he is cultivating, as he does not know exactly where the line comes, probably there may be half an acre or an acre. The chicken house and buildings and outbuildings are on it. He could not say what this 120 acres is worth today, he has never cruised it, the timber would have to be estimated on it, and the land would have to be

estimated, and he really could not put a price on it, there is good timber on it—good wood timber, all of it. He would say that it would cut probably fifteen hundred cord of wood on this 120 acres, wood is worth one dollar a cord stumpage, which would be fifteen hundred dollars for the wood that is on it, and then the land after the timber is cut off, is worth more than the timber, after it is put in cultivation and cleared up, and would be worth at least fifteen hundred dollars more, and he believes that would make that 120 acres worth about three thousand dollars. His improvements are not on this 120 acres. He has no picture of the timber, he has no other picture besides this Government's Exhibit 124, showing the timber that is on this 120 acres, these are just some photographs his wife happened to have when he started. Handing counsel a photograph, witness says that that is another view of the house, taken right back of the house, that is part of that probably. That is practically all, he has no picture of the timber. There is a couple of photographs of a mining tunnel. His father had a mine there, but that is separate land. The railroad company never claimed that forty. The title lays between witness and his brother and the Government on that. He did not pay the railroad company $2.50 an acre for that, the company never claimed that against his father, his father contested the company on that and it never claimed the land, it abandoned it to him and gave it up, it is a quartz mine, one has to dig down into the earth to get it. They have got in one tunnel about four hundred feet altogether, and a

shaft about fifty feet, his father has milled sixty ton there from that upper tunnel that netted him $31.43 a ton in gold, and has taken out sixty tons which netted him that, and has taken about $1200 worth of gold out of this mining claim after paying all expenses. They put it all back in the mine in development work and they are still developing it. Witness ran 150 feet of tunnel last winter, that cost him about four dollars a foot, and he did the work himself and one man with him, and furnished the powder. The mine is practically a prospect, they are developing, showing it up, and they cannot put any price on it. They are going ahead all the time developing it.

Q. When sixty tons brings $1200 it is more than a prospect, isn't it?

A. Well, if we get enough of it, yes; if we get enough of it.

Q. That is a mine, isn't it?

A. Well, a mine is a large body of ore in sight, something you go up and put a mill on it. You put a mill up on sixty tons today, and tomorrow you haven't got anything.

Q. You don't think that is a pocket?

A. No, we have a true fissure vein, five feet between the walls, and we have cut it the full length of the vein.

Q. That is considered a good mine, isn't it?

A. That is considered a good prospect to make a

mine, yes; but it takes lots of development work to open it up.

Whereupon witness testified that one had to have money to put in a quartz mill, things of that kind. The description of that forty and the exact numbers—it is adjoining this other, section 17, township 39 south, range 1 east. The Ashland Reserve is back of this in the neighborhood of three miles, and there is timber all the way back of him. He does not know how many acres there are in this reserve, but there are several thousand acres. Referring to Government's Exhibit 124, there is fir timber shown to the right in the picture, that lays on their mining claim, that is small timber, which will average about twelve or fifteen inches in diameter, practically second growth. There are some heavy trees in it, that one can see there, some very large timber in it, and there is second growth in the picture that will average about twenty inches, that timber was pretty small when he went there, it has grown certainly since then.

Q. Now, over in the distance, that is, looking over beyond Ashland, over the hills, the bald hills on the east side of the valley, isn't it?

A. Yes, that is looking east.

Q. Looking east?

A. Looking across the valley.

Q. Those are bald hills over on that side mainly?

A. That is Grizzly over there.

Q. That is bald, isn't it, mostly?

A. There is timber on the top there back of Mount Grizzly.

Q. There is some scrub timber, little scrub trees?

A. There is some good timber there too.

Q. After you get over the ridge?

A. Yes, on the top, and over on the other side. On this side there is no heavy timber.

Whereupon witness testified that Provost, whose initials he does not remember, bought some land there, he thinks Provost came out to Ashland some twenty years ago, from Yamhill County, and bought some railroad land, and some other land for timber that was on it, and cut cord wood and stuff of that kind to haul to Ashland, and was in the wood business, and after he cut the timber off he sold the land, he did not cut all the timber off, they are still cutting timber off of it now. He has not sold any of the land that has been entirely cut off that he is familiar with, at least he does not know that he has. Provost has sold it all, has sold the land, and it has changed hands three or four times since then. He believes Provost owned two hundred acres that he bought there. They are not farming it, except a small portion, he does not know how much, but he has been there, but the people that have been living on the corner for the last year or so, are farming some of it, he does not know how much. They have only the work outside, and haul wood to town, but they have really discontinued hauling

wood. Another man had a mortgage, he thinks, and he has taken over this land on a mortgage, this little piece of land, this two hundred acres. It was first bought by Provost, who sold it to Phipps, Phipps sold it on terms, and they couldn't make good and gave security and lost it. He took a mortgage some way, and turned the mortgage over to a man by the name of Hodson, and Hodson practically has the land, they did not make good on it. They bought it to pay out on it and they did not pay out on it, they threw it up. He knows something about Railroad Paririe over in the Dead Indian country. There is about a quarter section, more or less, he would judge, it was about twenty-five miles east of Ashland, but he does not know what township and range it is in. He was over there hunting—and was over there once after a cow he bought, he bought a cow and went after her, over the range, to get her, six or seven years ago. There is lots of white fir around that prairie that he does not consider good, and lots of yellow fir that is punky—doty—he does not consider it very good. He does not know who owns that timber now. They call it Railroad Prairie because it belongs to the Railroad Company, and he knows there is lots of good prairie—glades rather—big glades. It is good land, lays nice, this Railroad Prairie. There is one party there in his neighborhood, back of him, by the name of Connor, or Cotton, who homesteaded a piece and put in a saw-mill and cut timber off for saw mill purposes, and sold it since, and the people who have it now are using it for wood recently, they have cleared up some of the land on it. In fact,

Cotton originally cleared up quite a piece, quite a lot of trees, he was killed, a man named Messenger shot him, and his widow disposed of the place, and the place has practically gone to rack since then, practically gone back into the wild since. They logged off the land for sawmill purposes and wood, and then moved away and it has grown up again. He does not know of any homestead people back in there who have sold their claims to timber people for investment, none that he knows anything about. There is no one living back of him, between that and the reserve, that is all in the timber. He has about twenty acres cleared, practically had it all set out to orchard at one time. Last spring he set out one hundred young trees more, and he has a lot of trees ordered to set out this fall, he has trees all over this, scattered all over it like an orchard, he might say there are ten acres in orchard, there would be in the neighborhood of ten acres bearing, he has never surveyed it, he does not mean that he has ten acres of apples that are bearing, he has about fifty or seventy-five trees coming into bearing, they are Newtowns and Ganos and some Ben Davis and some Spitzenbergs. He has about seventy-five trees of these kinds of apples coming into bearing, apples today that are marketable. He picked thirty boxes off of them this fall, and has them in his basement at home for his own use. He does not know what apples are selling for at Ashland this year, apples like those would bring the highest market price because they are free from any blemishes. They were not hurt by hail like all the apples in the valley were, that is, hail damaged most all the ap-

ples in the valley this year. They are not bothered with frost as much as they are down below, he had some tomato vines that were green when they were killed in town, the frost seems to miss the high land, and will settle down on the low land, they do not have the fog there, and that is one reason for it, that they have in the valley. He does not know the Burrell or John Olwell orchards at Medford by that name, but he knows a large number of fine orchards between Medford and Phoenix, on the right hand side of the railroad as one goes south, and these lands down there are nearly all in bearing trees. He claims his father's right to this 120 acres of that railroad land, and they are entitled to it, they have spent their life there making it their home, improving it, and built a road to it, and he does not think they would give up possession if they were asked to do so.

Q. Well, your father thought that Binger Hermann had wronged him in favor of the railroad company, didn't he?

A. Well, that seemed to be my father's opinion, yes.

Q. And you are of the same opinion, too?

A. Well, no; but we have made it our home, and we have gone to a great deal of expense to build a road up there.

Q. I understand, and you don't feel very kindly over the action of Mr. Hermann?

A. Well, no; no, I really—I don't know anything

about it. I am just in my father's—father said Binger Hermann ruled against him. That is as far as I know anything about it.

Q. But you are going to get that 120 acres if you can?

A. Yes, sir, that is a fact.

Q. Now, I suppose you mean that this land is suitable for agriculture, this railroad land that has timber on it, after the timber is removed?

A. Well, there is lots of it that can be cleared up that it hasn't got much timber on it.

Q. I am speaking now of that that his timber on it.

A. Timber on it?

Q. You would have to take the timber off it before you could plow it?

A. Certainly, it would have to be cleared and grubbed, certainly.

Whereupon, on redirect examination, witness testified that his father set out these fifty or seventy-five trees that are bearing, about six or seven years ago, something like that, but they have had no care, they were set out and stock has run on them, and they have been neglected because his father was sick all that length of time. He was an invalid on the flat of his back, in the hospital most of the time. This spring witness pruned them and plowed them and cultivated them, but did not spray them or anything like that. This is not the first year they

have borne fruit, they bore fruit about three years ago. His father got apples off of them when he was up there the last time, but they had been neglected since. Witness took out a lot of them that the gophers had eaten off, they hadn't had care. He took them out and set in new trees—left the best trees. He set out this year in the neighborhood of one hundred trees last spring, and has there something from one hundred and fifty to one hundred and seventy-five trees, more than that all told—he has two hundred trees, good trees, there are more than that, but there are two hundred that are good trees. He set those trees out to grow apples for his own use as well as to ship and sell. He also set out strawberry plants—five thousand strawberry plants last spring—and they are doing well, finest in the country, and he expects to have two or three hundred crates of strawberries next year off of them. He is preparing to set out more this season. They used to have a very fine strawberry patch there, and one summer they sold four hundred crates of strawberries off of those, at $1.50 a crate. They came on theFourth of July, when the others were all gone—there was a big demand for them. A little later they would come on when the market was the best. They all ran out for the lack of care and attention, and he plowed out the patch last year and set it in alfalfa last spring, and set out another patch. Alfalfa grows up there without irrigation, they cut three crops a year. It can be watered, all that land there has mountain springs and streams, there are springs on all of it, there is hardly a quarter section in there but what there is water—by

building a small reservoir one can get water on a great deal of it. It is his intention on this place to build a reservoir, in fact, he built the ditch last spring, he has the ditch dug, but he did not have time to build the reservoir. From his experience there and observation of the results, in his judgment, that land up there where he is, would ultimately be as good fruit land as the land in the valley, and for some fruits it is better, for apples it is better, it is a little high for peaches. They had some peaches this year on their trees, but he don't know—their peach trees are young—but he believes it is a little high for peaches, their pear trees are fine, they have a few pear trees and plums, pears and plums never fail to bear.

Whereupon, on recross examination, witness testified that there are some little apple trees shown in the picture there. The main orchard lays down on the other side of the house, that is an apple tree and that is an apple tree—pointing to the picture. Those apple trees were set out about four or five years ago. There is a tree right there, just a few days ago he picked two boxes of apples off that one little tree, which his father set out, he would think, about seven years ago, it is a red apple, he does not know what it is, but it is a nice apple. Some of the trees have died out in the open there, they were set out in rows, but then they have died out, there are little trees which he has set in there that don't show up, the trees died out for lack of care, and the stock beat them down, the stock got in on them. His father was sick and witness was not on the homestead at the time. Down below the barn he has a nice lot of trees, good sized, the barn is

on a little lower ground.

Whereupon S. N. WARFIELD, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-three years old, resides at Corvallis, Benton County, Oregon, and has been living at Corvallis ever since December 7, 1910, was born and raised in that county. Before coming to Corvallis he lived in Alsea Valley, was born in that valley in Section 7, Township 14 South, Range 7 West and has lived in Benton County all his life. His father was a farmer and homesteaded 160 acres, and then purchased 69 acres from the railroad company, and first moved on to a piece of railroad land, and after the surveys were made discovered that he was on railroad land, about a quarter of a mile too far on the north from his homestead line, and he then moved to the homestead. Witness was six years old when his father moved on this homestead, and recently after that his father purchased from the railroad company this other 69 acres, after proving up on his homestead, he moved back to where he had first made his improvments and his orchard. His father took up and moved on to his homestead about 36 years ago. His father intended to take a homestead there, but instead of getting the subdivisions that he intended to take, got off the line on to railroad land, and when he discovered the mistake, when the survey was made through there, he moved onto the land he intended to cover in his homestead settlement, and proved up under the homestead law. He does not remember how long it was after that, that his father purchased the railroad land, but he remembers

that he made his payments by instalments in ten years, and paid $1.25 per acre for the land. He could not say exactly the date his father bought that railroad land, but he knows it was recently after they moved onto the homestead. He purchased that about that time and began to make his payments about the time they moved on to the homestead, that was when the state school lands were selling at $1.25 an acre in Oregon. The homestead was principally bench land, he would judge there was about six acres in the bottom and the rest of it was what they call bench land, and this up-land, sort of rolling. His father lived on the homestead for some twelve or fifteen years, and his father's family lived there until they moved back on to the piece that had been purchased from the railroad company, and they are still living there, his mother is, in fact, his mother and one of his brothers are still on the place. They had a family of nine children and his father made his living in the farming business right there, all the time, on the place. Witness never left his father's home, his father died when witness was 18 years old, and he was the oldest one of the boys, but had a sister that was older than he was. The rest of the children were all younger, so he lived on the place and ran the ranch until he was married, and then he purchased a forty, right adjoining that, and lived there until he was elected county recorder and moved to Corvallis, lived there all the time. His house was within one hundred yards of his mother's. He managed and was really the head of the family ever since his father's death. That 40 acres that he purchased there was covered with brush

and timber, with the exception of about three acres, there was about three acres of cleared land at the time, that was a little burn when he purchased it. He has been engaged in farming his own place and that of his mother. He went to work and slashed that off, and has grubbed and cleared up a good portion of it now, and has cleared about 25 acres of his 40 acre tract. He raised wheat, oats, vetch and some clover on his father's farm and on his own farm. He raised corn, potatoes and all kinds of garden vegetables of all descriptions. Grapes do well, and they raised grapes, apples and pears, and they have a nice orchard now on the place. Referring to the Alsea Valley, he would not hardly be able to say how much it covers, on account of the way the river runs. Really the principal part of the valley lays in three sections on what they call the south side of the river, and then the North Alsea and the South Alsea; but it covers, he should judge, a township and a half or more. Practically using the watershed, there would be two, or three, or four townships there. In referring to the Alsea Valley he does not have reference merely to the bottom lands along the Alsea River, because he thinks there are many people living on the upland there, and he includes the benches and hill land as part of the Alsea Valley. That area taken in a township there, and extends from the river up and includes the benches and hills that were there. The valley practically is only at the widest place, he should judge, not more than a mile and a half wide, something like that. Along the Alsea river there have been settlements there for a number of years. The soil

of that bench land is really some of the richest land that they have, the soil is very deep, in fact, that bench land is where the large fern grows. Fern grows there probably eight feet high, lots of them, and where that large fern grows there is really some of the deepest soil that they have. He has cultivated this bench land, and it is productive soil. This bench land, with reference to the bottom land, lies higher. On their homestead, they farmed some 20 acres of bench land on the hill, and it was so steep they couldn't cut it with the binder, they used to cut it with a cradle, his father used to cradle it, and he has bound after him at different times by hand. He used to cut with a cradle, he and his neighbor, Mr. Steeplow, used to cut that with a cradle all right. Bench land and hill land are the same, he thinks it would be what one would consider either bench land or hill land, because what they call the hill is the rolling land, in fact, where it does not rise too high, because otherwise they would call it mountains. There are only two or three places they call mountains there, what they call Prairie Mountain and Grass Mountain, something like that, otherwise they would call it bench land or hill land. When he refers to bench land, he means hill land, the upland off the bottom. He does not mean table or level land, but he means the rolling land on the foothills. There are different people living in different sections that have different definitions for bench lands. It is rolling land, with a little flat on the top here and there. He has been engaged in farming in this country that he has spoken of since he was old enough to farm until

he was elected recorder and moved to Corvallis two years ago. He is acquainted with farming conditions in Benton County. Referring to Defendants' Exhibit 259, he notices the town of Alsea marked there, and the other markings thereon, pointing to the North Alsea and South Alsea, state that they are really the Alsea River, as they call it over there, they call one the South Alsea and the other the North Alsea. He is acquainted along Mill Creek, which is in Section 7, Township 14 South, Range 8 West, and right in there is the homestead and then a little further they had 69 acres there, in fact, he is acquainted with all of Township 14 South, Range 8 West, and the south half of Township 13 South, Range 8 West, and all of Township 14 South, Range 7 West, and he is well acquainted with Township 13 South, Range 7 West. His father's homestead is situated in Section 18, Township 14 South, Range 7 West. There is some timber in Township 14 South, Range 7 West, some very good timber, and there is a lot of it that has no timber on it at all, but is covered with some hazel brush, some little fir and there is some vine maple and cherry. He would think that he could tell what areas contain merchantable timber better from the sections. There is a portion of Section 9, and the north half of the north half of Section 11, and Sections 3, 17, 35, some in 25 and some in 19. In fact, there are not very many good sections in that township of timber. With the exception of these sections just mentioned the growth of timber is not heavy there, in any of those sections. The character of

the rest of the sections as to timber is that it is more or less scattered, open, and in fact, open bench, what they call open glades there, and there is lots of it that has nothing on it at all, just some little scattering brush. That township is what they call hill land or rolling land, principally rolling land. There are settlers living in that township on the even sections, every even section in that township is taken with the exception of the south half of section 20, and there are three quarters in section 32, he believes that is all but what is taken in that township. The character of the lands that are not taken there is rather rough and pretty steep, and is the poorest land in the township. Section 30 is not taken in that township. These lands were taken by homesteaders. They are living there and have proved up on their places. In fact, none of them have been sold to any companies. There are several sections of railroad lands in these townships there that would be just as good as a lot of that that has been settled heretofore, there is no difference between the odd and even numbered sections, the numbering makes no difference. The unsold lands of the railroad company remain practically intact as shown on this map, except for the few yellow markings and a few blue markings. They are as suitable for settlement purposes as the homesteads that have been taken up there, with the exception of some right along on the Alsea river which were taken in the early days, meaning adjoining the even numbered sections. He is acquainted with the railroad lands in Township 14 South, Range 8 West, and there isn't very much timber in that

township, in fact, there is but very little good timber in Township 14 South, Range 8 West, with the exception of Section 32. He does not think there is an even section piece of land in that township but what is taken, except about three-quarters of a section not taken. There are homestead settlers occupying the even sections in that township, sections 22 and 28 in that township are all homesteaded now, except there was one timber claim in section 28, the rest of it is all homesteaded and homesteaders are living there, and that is not as good as sections 23 and 15, which are better sections than those taken, better than the even sections there. Generally speaking the adjoining lands there in that section through that township, are of the same general character and formation,—the even and odd sections. He is acquainted with the south part of Township 13 South, Range 8 West, which is rough, in fact, it is what they would call the roughest land, about the roughest land in that section of the country there, that is further back from the Alsea river, and the ranches up on what they call Grass Mountain, which is, he should judge, about 3,000 feet high. Section 31 in that township has got some good land. There is a good portion of it that is covered with vine maple and cherry and soft maple, in fact, there are homesteads right adjoining that same township, that is underbrush more than timber, there is very little timber on it. There are settlers on the other even numbered sections, but not on all of them. Section 21 is principally all open, in fact, that was grazed two or three hundred head of cattle grazed every summer on

that. Section 20 is principally all open land, with the exception of one quarter section, the rest of it is all open land. Section 16 is all open and 22 is very nearly all open, it is in a burn, 22 is pretty badly burned. The north half of 22 has some tolerable fair timber, but the rest is all open. Section 27 is all open with the exception of the southwest quarter, it has some very good timber on it, the rest is all open land, in a burn. Section 36, part of it is farmed at the present time, there is a portion of 35 that is being farmed at the present time, it has been sold. 36 is a school section and 35 is a railroad section. There is not a heavy growth of timber in there generally through that township, except in the places he has mentioned. There are but a few sections of timber there, the south half of section 28 has a good growth of timber, and section 33 has one good quarter of timber. If the timber were removed, on the land he has mentioned, not very much on that up there could be cultivated, but it would be excellent grass land. There would be some of it that would be very steep, which would prevent cultivation there. There is some land in section 31 which could be cultivated, and quite a lot of Section 21 could be cultivated, only it is a little high for crops, about 8,000 feet in altitude. There are settlers residing in some of the even sections there, and also some cultivation of them. In section 6 it is all taken, in that township, there isn't but very little of it up there that is cultivated. The title to a part of these even sections has passed from the Government. The township generally is not very valuable for timber, with the exception of just a portion

of it. In the township, he should judge, there would not be more than one-fourth of the south half of it that would be valuable for timber at all, the rest is all open land. He is not much acquainted about the post office or town marked there on the map, Harlan. North there is the wagon road grant, the Yaquina Bay wagon road grant. He does not know just how wide that was, but thinks it was about a ten mile grant, but he is not quite sure of the width of that grant. The grant has been divided into small tracts and is being sold to settlers now, he could not say just how long settlers have been purchasing that land through there, he knows there have been several transfers since he has been in the office there. He has been up over that summit over the wagon road and also on the railroad, there are settlements all the way across on the road. They raise grain, vetch and dairying, goats, cattle and sheep up there, it is similar land to the land in the grant over south there. He is acquainted with a portion of Township 14 South, Range 6 West, not so well acquainted with that as he is further west, because his trading point is on the road to Corvallis and also to Monroe, and across over the county road running from Alsea to Monroe, and also to Corvallis. He is not very much acquainted in Township 13 South, Range 6 West. The lands he is acquainted with in Township 14 South, Range 6 West, are about the same as the lands in Township 14 South, Range 7 West, that is getting closer to the Willamette Valley. There is some good land right on the divide between Glenbrook and the south fork of the Alsea, there is a rich

dividing ridge between them. He is acquainted with some of the specific sections in Township 14 South, Range 7 West, and is practically acquainted with most all of them, it is open land, and can be cultivated after any timber or growth that is on it is removed. In Section 19, Township 14 South, Range 7 West, there is a portion that can be cultivated. The county road runs right through it. There is some good land, what they call bench or rolling land there, in fact, it is not steep at all, it could be easily cleared, and there is lots of it that has nothing on it only now and then an old snag, or a little hazel brush, or something like that. In Section 21 there is some good land, the northwest quarter of Section 21 has some good land, and it is practically level, the north half of Section 15 is all open land, there is no timber on it. The south three-quarters of Section 11 is all open land. Section 23 is principally open, and a portion of 27, though 27 is considered pretty rough, it rises up on the mountain. Section 19 has some good bottom land on it, in fact, his brother cultivated one forty there for six or eight years, or a portion of one forty. That is railroad land. He tried to buy it and the company would not sell it, so he continued to cultivate it, he fenced it for the company and cultivated it, that was in Section 19. Section 31 has some good land. Principally 31 and 37, and the north half of five, and portions of 33, are more adapted to stock raising than for agricultural purposes, there is a portion which would be good for agriculture. By agriculture he means tillage, plowing and sowing of grain. He has mentioned some sections which

had timber on them, and thinks that that which has timber on it would be just as good as the other for agriculture after the timber was removed and the land cleared. Section 19, where it has some of the best timber is some of the best land there is there. There is one hundred acres in one body there that is practically level, just a big level bench there, which is pretty well covered with timber. This 40 acre tract his brother tried to buy from the company, applied to purchase seven or eight years ago, and the company told him at that time that it had not placed a valuation on it and that when it placed a valuation, it probably would talk business with him, and before the company placed a valuation on it, it was taken off the market. His brother has applied to purchase it since then, within the last four years, and the company replied it was not selling the land, and that it was not for sale. In Section 5, Township 14 South, Range 7 West, there is probably 100 acres that is what is called Austin Howell flat, a big flat there, which is practically level. One can drive a wagon and team over all of it, and with very little work that could all be put in cultivation. In Section 23, Township 14 South, Range 7 West, there is what they call the railroad flat of 60 acres, that is practically as level as this floor. It is all just now and then scattering timber up on the benches, and could be cultivated, in fact, the land right by the side of it, is being cultivated up above. There is a ranch of 160 acres right by the side of it, and it was taken up three years ago, and was sold a short time ago for $3,500, right adjoining, the same kind of land. This 160 acres

adjoining this Section 23 was sold this spring. Section 21 is good land, there is a lot of bottom land in Section 21 that is covered with cherry and vine maple, there has been an application made for that. A fellow went to work and built a house on it, but finally abandoned it on account of not being able to purchase that. This was within the last six or eight years. He does not know what reply was received to the application. This man did a little slashing and built a house on that, and the railroad company refused to sell. This tract was on the bottom, there was vine maple and cherry on it, there could be 25 or 30 acres rendered tillable easy enough, it is right on the river, on what they call the Salmonberry stream. In Section 29 there is some good land, a man by the name of Roland improved some of that in there and built a house, but on account of not being able to secure title to it he had to abandon it, this was within the last seven years. Roland tried to get 80 acres of this railroad land. He probably could have gotten 15 or 20 acres of tillable land by clearing, out of that 80, on the little creek there. There is Section 17, Township 14 South, Range 7 West, which has been sold by the railroad company. Section 7, Township 14 South, Range 8 West, has a lot of open land. The west half of the west half of Section 7, Township 14 South, Range 8 West, is practically all bottom land. The railroad company sold that a few years ago to a man by the name of Chastine, who made a couple of payments and was not able to complete his payments and let it go back to the company and forfeited his contract. He could have

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cultivated and made tillable at least half of that land. It lays right on the Alsea river bottom, right along the river, this man agreed to pay three dollars an acre for it, this must have been about 13 or 14 years ago that he entered into that contract. Section 15 has very little timber on it. Section 15, Township 14 South, Range 8 West is what they call principally rolling bench land, these open glades and benches, quite a portion of that could be cultivated, also Section 11 has a lot of land that can be cultivated, that is all in Township 14 South, Range 8 West. In Section 5 there is very little land which he would consider tillable land, some of it is a little steep, it is principally open, but a little steep. The soil is very good soil, but it is more adapted for grazing than for agriculture. They cultivate some of that steep land there, they cradled land adjoining this Section 5. In 14-5 there is a man by the name of Strake who bought 40 acres out of that section and has a nice orchard there, he and his family are living there on that place and he has cultivated land so steep that he had to mow it and then he was not able to put his team on it to haul that off, so he fixed it up and shoved it down the hill with a pitch fork, down to the road, where he could get it into his wagon. But he grows vetch there as high as a mans' head on that hill. He can slide his crop over his land, but he cannot drive over with his team, that is, with a wagon, they manage to plow that land, but it is pretty steep plowing, he had to plow it down hill, he can use a plow on it, but could not run a wagon or two-wheeled vehicle, he could not plow but one way either,

he had to plow around those knolls. Some of them have reversible plows, hillside plows, and they will plow through and reverse and go back again, reversing the mold board on it. A portion of Section 3 has some good land, the north half of the north half of 3 is not very good, in fact it is too steep, the greater portion of it would be too steep. There is some little timber on it, but there is some good land right in on the bottom, on what they call Schoolhouse creek, that has some good land on it. A man made an application on that a few years ago by the name of Taylor, and he failed to make his payments and it reverted back. He could not say what he did agree to pay for it at that time, because it has been some 15 years ago, most of it at that time was about $2.50 an acre, that is about 15 years ago since he made application for the land, he could not say when that land was forfeited. Section 31, Township 13 South, Range 7 West, has a lot of open land on it. There is a very little open land in Section 13-7, with the exception—that is, that would be suitable for tillable land, the northeast of the northeast part of the township would be more adapted to grazing than it would be for tillage, that is in Township 13 South, Range 7 West, there was a heavy burn there a few years ago. There are some settlers in there. Recently, this last fall, settlers have moved in there, they have applied to the county to build them a county road in there and the county has already sent the county surveyor to survey it. There is a great demand, he thinks, for lands for settlement purposes and there has been a number of people in the office inquiring

for land that they could get, as much as ten or fifteen acres which they could use for cultivation. Practically this land that these settlers went in on in that northwestern portion of the township there, had no value except for farming, agricultural and grazing purposes, there is no timber value there. That is not nearly as good land as some of the land that he has mentioned, and it is not so handy, accessible to get to, there is no road to it. There is no road running through there, but those sections he has mentioned, there is a county road right past them, or running through them. He does not know but what he has pretty well gone over a good portion of the townships, or sections there, that he is acquainted with, there might be some, but it would be scattering, so far as he knows now, that would be all of it.

"Q. Mr. Warfield, what has been the effect of the railroad company's failure to fulfill the conditions of this grant and sell this land to actual settlers in tracts of 160 acres, on the community there in which you are acquainted?

A. Why, I think it has retarded the country a good deal, on account of settling up by settlers, because there would have been many that would have been able to have gone on to this land and made homes there, for there are people making homes at the present time on land no better, and some not as good as a great portion of this land that is idle at the present time."

Whereupon witness testified that this hill land as compared with the valley land is the best fruit land that

they have, and the reason for that is, that it is considered self-drained land, and not only that, but where this large fern is, the soil is more porous, and is more adapted for fruit raising than what it is on the lower clay or sandy soil, it is the best fruit land that they have. The trees are not infected as much with disease and pests in the hills as they are in the valleys, in fact, they are not affected in the Alsea valley anything like they are in the Willamette Valley, but very few pests in that section of the country. The farmers there in that section of the country that he is acquainted with have lots of goats. He has never raised any goats, but his brother has been in the goat business for a number of years, and is at the present time, he has something like 100 head and has run as many as 250 head. Goats are a productive animal from a financial standpoint, in this particular, on this tract he mentioned awhile ago, his brother homesteaded 160 acres adjoining that, and the river being not far from his house there, and he had a large foot log across the river, and he would put the nannies on one side of the river and the wethers on the other, and the last winter that he had goats in on that place, the wethers were never fed a bite from the time he sheared them. He said he salted them a time or two, but he made no provision for winter feeding. The climate is not severe in that country. The country is adapted to goat raising, they do well there, goats are palatable as a food, and besides they get the increase and the wool, and he considers a goat just as good as a sheep. Whereupon, on cross examination, witness testified that his father and mother

were married in the Alsea valley, and settled and made a home there about 45 years ago. There were a few settlers in the Alsea country at that time. The Alsea River empties into the Pacific Ocean and gets to be quite a stream by the time it reaches the coast, it has two prongs near the post office at Alsea, one the North Alsea and the other the South Alsea, and that heads in the Coast Range Mountains. These homes about which he has been speaking are all of them on the west slope of the Coast Range. There is a portion of this cleared land where there has been a big burn, which was there 50 or 60 years ago according to the traditions of the community. The town of Alsea, he would judge, has some 25 or 30 houses, three stores and a post office. There is no saw mill at the village there, but there is a saw mill in the valley, there is one not far away. He should judge that the Alsea Valley is from a mile to a mile and a half in the widest places. It does not widen out into tide land as it gets towards the ocean, not from the Alsea Valley. From the Alsea Valley down to the head of tide water it is narrow, and one might say, one farm after another along down the river. It is not wide down there. There is no tide land until one gets down on the Alsea Bay, there is not much tide land around the Alsea Bay, but very little. Alsea has had 25 or 30 houses within the last year or two. The Alsea Valley has not been isolated and cut off by itself there over the Coast Range, away from Corvallis and the valley before the last ten years, more than now, only within the last three or four years they have made more improvements in the roads. They

do not raise the amount of grain in the Alsea Valley that they did twenty years ago. They turn it to stock raising and dairying. It is a clear stock and dairy country. These settlers that he says have gone in there on these hill lands have gone in there within the last 15 years, he should judge, with the exception of a few right down on the foothills adjoining the valley, what they would call probably along the river. Most of these railroad lands that he knew of having been sold, with which he is acquainted, in these various townships that he has described, were sold for about $2.50 an acre. These people who have applied to purchase in the last seven or eight years, have just applied for their prices, there are some of them who have made offers higher than $2.50 an acre for the lands. There were a number of these people living in the valley there who were bona fide applicants, but they were not attempting to get this land for $2.50 an acre under this Act of Congress. There is one man in beyond, by the name of Spencer, who has been living on a place there for 25 years before it was surveyed, and when it came to be surveyed, the railroad company got part of his house and a good portion of his orchard, and he made application to them, and then they would not sell to him, they have not put him out of his house, and he was living there, it was a homestead.

Q. You don't speak of that for the purpose of raising a prejudice against the railroad company?

A. Certainly not, not at all.

Q. You speak of that as an incident?

A. Just an incident.

Q. I don't refer to that kind of applicant. I refer to these people that are going out, applying for this railroad land, offering to pay $2.50 an acre for quarter sections of timber that range from eight to ten million feet to the quarter.

A. Yes.

Q. That is worth from $5000 to $10,000 today?

A. Yes, sir.

Q. You haven't any of that class of people over there that are making these applications, have you?

A. Very few of them.

The even sections, or parts of the even sections, are all taken, and title has passed from the United States to them. The principal part of these settlers residing in Township 14 South, Ranges 7 and 8 West, reside on the lands, and in the south half of township 13 South, Range 8 West, there are some who do not reside on these lands. There are not any homesteads applied for, or proved up on, or commuted, in the timbered part of these sections, the even sections, where they do not now live on the land. There were a number of homesteads filed there in Township 13 South, Range 7 West, but they changed from that before they made their proof, and took it under the Timber and Stone Act, in Township 13 South, Range 7 West, where it was suitable for timber. The Timber and Stone Act was passed in 1878. Twenty years ago, of course, there was not the demand for these

railroad lands that there is at the present time. At that time $1.25 to $2.50 an acre for these railroad lands would have been considered dear, of course, land values then were less than they are now. There were not the applications at that time, not like there are at the present time. In fact, there was not the demand for that railroad land at that time.

Q. Twenty years ago they could have got that land from the railroad company at probably $1.50 to $2 an acre, and it would have been dear at that, wouldn't it, looking at it at that time as it then appeared?

A. At that time it would have been considered, of course, land values then were less than they are now, yes.

Q. I understand, but at that time people didn't want to buy that land hardly at any price twenty years ago.

A. There were not the applications, no, at that time, not like there are at the present time.

Q. Just put yourself now in the position of the railroad company, and assume that the railroad company could only sell to actual settlers, in quantities not to exceed 160 acres, at a price not exceeding $2.50 an acre, isn't it true, to your knowledge, that from 1860, well, 1870, we will say, up to 1890 there was substantially no demand for that land except a few preferred quarters close to settlements?

A. Well, in fact there was not the demand for it at that time, and I presume there were not as many applications sent in on that at that time so much.

Q. In other words if the company would have been sitting around waiting for the actual settler to come, for about twenty years he would not be coming, would he, even at any price, from 1870 now down to 1890?

A. Of course, I don't know the conditions so much at that time, because that was really before I was at an age to take much interest in land values.

Q. I know, but your knowledge is based upon what has happened since?

A. Yes.

Q. Now, you know that up to 1890 there wasn't any demand for this railroad land of consequence?

A. Not so much as there has been in the last eighteen—sixteen or eighteen years.

Q. Yes, and most of that demand has been in the last eight or ten years? The bulk of the demand for these lands has arisen in the last eight or ten years? That is true, isn't it?

A. More so in the last fifteen years, yes.

Q. Prior to that time though there wasn't much demand for that land?

A. Not so much, no, because the condition of the roads then at that time was not good there.

Q. Well, don't you know, Mr. Warfield, as a resident of Oregon, that the lands in the mountains or in the timber or in the foothills from 1870 up to 1890 were practically unsought for any purpose, excepting

along the streams and in the old settled parts, like your father's place over there on the Alsea? Now, isn't that historically true?

A. Well, to a great extent it is, yes.

RE-DIRECT EXAMINATION.

Q. Now, Mr. Warfield, these people that have applied for land that you are acquainted with, over there in 14 south 7 and 8 west, they were people who sought the lands for purposes of settlement and agriculture, as I understand from your testimony?

A. Yes, sir.

Q. People who resided in that country?

A. Yes. There were a great many that I know of throughout the valley there that made applications for land there.

Q. They were not any timber speculators or people desirous only of procuring timber that might be on the land?

A. Not adjoining what we call the Alsea valley, or tributary near there. Of course, there has been applications on some of the timbered land through there. It has been filed.

Q. What have been the prices asked over there, do you know, in the last ten years on that land by that railroad company?

Mr. Fenton: By the railroad company?

Mr. Rabb: Yes, prior to the time that it was withdrawn from sale.

A. Before it was withdrawn from sale there was, for instance, Mr. Banton, Mr. Wrenn and Mr. Peak and Mr. Sapp a number of them that had settled on some land there before it was surveyed, and the railroad company asked them $7.50 an acre for this land. That was before it was withdrawn from sale. And so they carried this up—that has been going on now for, I should judge, about sixteen years. They won out here a few years ago."

Whereupon witness testified, that there were settlers on that land prior to the original survey, the man that the line ran through his house and orchard was D. R. Spencer, who attempted to purchase it from the railroad company, and the company would not sell it to him, that was some 15 or 16 years ago, recently after it was surveyed, when the patent was issued or the survey was made. The survey was made about some 18 or 19 years ago. He was a farmer, engaged in farming that land, and is living there at the present time. The settlements in this country were first made along the roads, which generally followed the rivers, and since that time these settlements have drifted back to what they call the bench lands, the upper land, gone up from the bottom lands on to the hills. He is not acquainted with the demand which was made of the railroad company between 1870 and 1890, not so much owing to the demand, because he has never himself made any applica-

tion for the land, being situated as he was, and not able to go on the land. The only demand that he knew about was such as he would hear of neighbors applying to purchase the lands. In fact he knows that his brother has tried to buy that land adjoining him there, and also a younger brother tried to buy land in Section 23, Township 14 South, Range 8 West, and the company refused to sell that. They wanted that land for agricultural purposes. His brother, as he has stated, cultivated a portion of that forty and improved it. He has testified that one brother applied for the land adjoining his homestead, that was after he had taken his homestead. His brother applied to purchase that land within the last six years. This is farming land, and is the tract he spoke of awhile ago, in what they call the Railroad Flat, it is practically level, just now and then a scattering tree on that, it is what they would call farming land, because it can all be farmed, every bit of it. Whereupon on recross examination, witness testified, that every thing is called a farm over there, every 160 acres that is taken that may some day be cleared, in a way, some of them would call a very small tract, one might say, their farm, because they use that for raising their feed for dairying. It is a great dairy country. If a man had 160 acres, and there were three acres that were cleared, he would say he had a farm, generally like he was speaking awhile ago of the bench land. Whereupon on redirect examination witness testified, that Corvallis is one of the greatest dairying centers in Oregon, one of the largest creameries in the state, outside of Portland, is

at Corvallis. The celebrated Corvallis butter is made at Corvallis, and they have a creamery in the Alsea Valley. Township 14 South, Ranges 7 and 8 West, is more or less used for dairying, they have a creamery in there, they have a stock company and there are 100 stockholders in that creamery. They have a creamery right there and they ship their butter to Portland. They have wagons going out and collecting the cream. This land that he has testified about is generally well adapted for dairying purposes. In fact, the clover grows right on the highest lands there. They raise some of the best clover there is in the valley on that land. The altitude of none of this land is too high for dairying purposes, excepting what he was speaking of in the south half of Township 13 South, Range 8 West, up there in Sections 20 and 21, there was a man drove his dairy cows up there this last summer, and dairied all summer there, but in the winter time the snow gets a little too deep for it to be practical. If he had hay there he could winter his stock there, if he had feed there. These homesteaders up there in the even sections are all making a living on their lands, all that have been in there any time, long enough to get any improvements made so as they can raise feed for their stock.

Whereupon, I. B. SPIKER, a witness called on behalf of complainant, being duly sworn, testified, that he is twenty-eight years old, and the majority of his time he has made his home at Glendale, Douglas county, Oregon, where his folks live. He has lived in Douglas county ten years, and it was ten years ago

when he came to Oregon with his father. His father bought a ranch at Oakland, Oregon, of four hundred and eighty acres, when he came here, it had been an old improved ranch. They cultivated part of it, but used it principally for a stock ranch. It was on the mountain side, on the slope of the mountain side, and they practically used it for stock ranch. They did not aim to farm to any extent on it, only just raise what hay and like of that they wanted for farming purposes. That land was rough, what they call rolling land, it was just kind of on the hillsides, might be on the slope. It was on the slope of the mountain side and it was rolling, and there were draws running through it. There was some timber, what one might call timber or brush on it. Nearly all that country in there, not all of it, but on this place in particular there was young growth fir from four to ten or twelve inches in diameter. His father cultivated about seventy-five acres, raised hay, but did not thresh any, they cut it all for hay for the stock they kept on the place, it was oat hay and vetch. They raised wheat hay, wheat and barley. They raised all the vegetables that they needed, and raised fruits on that land—all kinds of fruits there, apples, pears, peaches, plums and grapes. He does not know how long that land had been occupied for farming purposes exactly, but it had been taken up quite a while ago. There were three homesteads there and his father bought the three of them, and like old Oregonians, they had done practically nothing, only lived there on what was coming in easy, and that was all there was ever done

on it. There is railroad land on the north and south of this place, but he could not say as to the sections because he was never very familiar with the sections. One piece of that railroad land adjoining the farming land that is on his father's place is just like the rest of the land there. It is good black soil, suitable for farming purposes, could be plowed just the same as the rest of it is there alongside of it. There are eighty acres in that piece of railroad land on the one side there, and on the other side he believes there are a hundred and twenty acres, but would not be sure. That is in township 24, he believes, range 6, but could not be sure, he does not know the sections. His father's place is about eight miles from Oakland northwest, and Isadora is north of Copeland five miles by sections, in township 24, range 5 west. He thought it was about a mile and a half west from Isadora, it was on an even section, was homesteaded. The first four or five years they were near Oakland, they lived on the farm there all the time. The map shows some railroad land there that has been deeded. There is some deeded land adjoining the ranch there, railroad land, in section 13 and in several of the other sections there are smaller parcels. In township 24 south, range 5 west, the railroad company has, in section 3, eighty acres, in 29, twenty-eight and forty-one hundredths acres, in 31, two hundred thirty-six and seventy-three hundredths acres, and in 35, eighty acres, that is all the railroad land in that township unsold, as shown by the map. He has been engaged in the farming business and is acquainted

with the farming conditions in Douglas County, in his experience there on the farm. Referring to "Defendants' Exhibit 259," the country right in there at Isadora, where his father lived, he has been over. he has hunted sheep and cattle and the like of that all through that country. Of course, all these corners and sections, he never took any particular interest in them, because that was not interesting to him. But so far as this country is concerned in township 24 south, range 6 west, he has been all over this land and country in that township, he would not say over all the township either, because there might be some of it he had not been over, but take it in general, he has been all through there down to the Umpqua river. The Umpqua river is a pretty crooked river, pointing to the land indicating township, 24 south, range 6 west. He has been over that land sufficiently to acquaint himself with the general formation and character of the soil, referring to the lands just described in township 24 south, range 6 west, and extending into range 7 west, to the Umpqua river as shown on "Defendants' Exhibit 259." He has been over that land a good deal, knows the lay of the land to a certain extent, and what is on it, and what they do in there. He would judge that from 50 to 75 per cent, somewhere in that neighborhood, of that land could be rendered suitable for cultivation, in his opinion, after any timber or any other growths that may be on the land are removed and the land cleared, it is rolling land, it is not level land. That country is not level by any means, but then the majority of people use that

land who have it in shape to use. That land as compared with his father's place is practically just the same. It is all rolling land and the country is practically the same all the way through there, there are hills and canyons. There are settlers on nearly all those even sections in there that are not deeded. There is some of that land which has been deeded, sometimes when some of that land was taken for timber, they entered it under the Timber and Stone Act, and the Timber and Stone entries were deeded. The settlers there have stock, and raise stock and turkeys, and things like that. Sheep and goats are what they principally make their living off of. They cultivate the lands for their own use. Wherever they want lands they need to cultivate, sufficient to get what produce they want from it, for their stock and the like of that, they cultivate the lands and raise hay on them for their stock that they have there, and their garden stuff, and such like that, and have little orchards. They raise any kind of grain that they have a mind to sow—wheat, oats, barley and rye, and have all kinds of fruit—apples, pears, peaches, plums, cherries. That is not a heavily timbered country, it is not what one would call heavy timber, there is a lot of underbrush and young growth which has timber in it, but it is not an unbroken forest, it is not what one would call a solid belt of timber, anything like that, it is spotted, some places there are large trees, and some places there are small ones. In township 32 south, range 7 west, and township 33 south, range 6 west, shown on this map of the lands covered with the green markings,

he is acquainted with that. He has lived at Glendale for the past seven or eight years, that is, his folks have lived there, and he has been there the majority of the time—and he has been around in that country and knows it in general. He does not know it as to any particular sections, to point the sections out, he does not know just how the sections lay. He became acquainted with that country by driving around over the country there, on the wagon roads. He used to drive a livery team there, and drove around that country and got acquainted with it in that manner. He has been around in there some and has a general acquaintance with the lands in those townships. On the creeks, there are lots of level bottom lands, but when one gets off those creeks he will find land that is rolling, and probably little flat places on top of ridges, or benches—he does not know which one would call it—but kind of flat places. One could probably go up a hill a ways, and then would strike a flat or something like that, and on those places, as a rule, there is lots of good soil. One will find little spots in there, probably from an acre to three or four acres, which have very good grass on and the like of that. Then in the burns, where the brush happens to be burned off or something like that, they grow good grass. Around in there, if the brush and timber were removed in that country upon any of this land, he believes 50 per cent would be tillable land if it were cleared up so a man could work it. It is not so rough but what it can be worked. He is acquainted with the lands in township 25 south, range 7 west, north and

west of Stephens, along the railroad track, and he has been along the railroad track several times over a wagon road. A good many times he has traveled over that. A good deal of that land, he notices, has been taken up and was lost to the grant by reason of prior entries, indicated by the yellow markings on this map, "Defendants' Exhibit 259." He is acquainted with these tracts near the railroad that are marked in green, south of Oakland, which is on a hill. There is a divide about two miles and a half above Isadora, which is north. The tract that he is speaking of is south. That country in there has young growth trees, from eight to ten inches through. There is some of that land there which is deeded land, upon which they have cut cordwood and piling and stuff like that. But as to that one piece in particular, he never was on it to his knowledge but then that is what that is, but it is young growth timber, what they call second growth. That has yellow land there in all that township except that tract, showing that the railroad company lost it by reason of prior entry. Now, in township 32 south, range 7 west, there are settlers there, that country is all settled up in there. It seems as though every place that that land is not deeded in that country, there are settlers on it, it seems as though people want to get hold of land all the time. There is no land in that neighborhood that anyone seems to know of that is government land, or anything else that can be gotten now excepting what is in the Reserve. There is some government land, some in the Reserve there, quite a lot of it, there is no vacant land at all,

there might possibly be an eighty or something like that once in a while, but they are very scare. If these lands were divided into one hundred and sixty acre tracts, in his opinion that average would hold good generally as to those hundred and sixty acre tracts.

Q. In your opinion, Mr. Spiker, in these communities that you are acquainted with, what has been the effect of the railroad company's failure to fulfill the conditions of this grant and sell the land to actual settlers at $2.50 an acre—the effect upon the community?

A. The way the majority of the people seem to think, the way the land is and everything like that, I don't think it would be any doubt but what it wouldn't be but a short time till the large majority of that land would be occupied by people.

Whereupon witness testified that there would be people who wanted to have homes and make a living off of it, and would be willing to settle on this railroad land. At the present time, it is nearly impossible for a man to get hold of a piece of land at a moderate price, one can buy all the land he wants, if he has plenty of money and wants to pay the big prices that land is worth. He believes that it was in 1907 that he made an application to get some railroad land in the Kellogg district on the Umpqua—not on the river. He has forgotten the price of it because he did not get any reply to his inquiry, he couldn't get it. That was in 1907, he believes it was, and he has forgotten all about it. He knows the character of that land and was on it.

It is rolling land and there was some of it that had this young growth fir on, and some had large trees on—trees among it—and then there were some open spots. He thought at the time he was on it that if he had it cleared up, there would be a hundred acres that could be farmed on it. The young growth of fir, grows pretty thick on it. Of course, it is small but it is thick, and to start in with, a person gets that timber cut down and the ground seeded for about five dollars an acre, and it then makes good grazing land, and afterwards the stumps come out easy. It is not good merchantable timber, that young, and take it in that country, the young growth timber is considered worthless on the ground at the present time, of course, there will be a time when it will be worth money, he expects, but at the present time it is a detriment to the country, because there is no pasture land on it, and it is just standing there, and one could not pay his taxes on it if one would leave it standing there, unless one would wait and consider the growth of the timber on it. The increase in the value of the lands would pay the cost of keeping it all right enough, if a man wanted to keep it and had it so he could keep it. There will be a time when it will be worth something all right. He was intending to use that land for a kind of home, and a stock country, it seems like as though everybody figures on stock, there is really more money in stock. Take lots of this bottom land, a man can make more out of it by running stock on it than he can by farming it. He made an application through a lawyer in Roseburg, and paid

him a fee—thinks he paid him five dollars but would not be certain, he thinks it was five dollars he paid him for making his application. There were several of them who wanted to get hold of some land in that country where they would be in there, together.

Whereupon, upon cross examination, witness testified, that the lawyers he applied to were Orcutt and Fullerton, living at Roseburg. He knew how to select the quarter section because they were in there on the land. About that time they were told about this country being opened in there, and they thought they could get some homesteads in there or buy that land, and he and another man went in there and looked it over. The other man was not a cruiser but was a man who wanted to get some land in there too, and they both went in there together. He would judge that this land was about forty or fifty miles, something in that neighborhood, from Roseburg, on the Umpqua. The Umpqua runs together in there, they fork down the other side of Roseburg, and they both empty in together. It was west of the forks of the Umpqua. Kellogg is west from Roseburg. He might have said that it was east of Roseburg, but that was mistaken if he did say so. It was not over on the headwaters of the Smith River, it was in the Coast Range.

Q. It was in about the best belt of timber there is in western Douglas County, wasn't it?

A. Well no, I hardly think so.

Q. Well, it was good timber land, wasn't it?

A. Well, some of it has good timber, yes. There are some large trees.

Q. How much timber was there, saw timber, on this quarter section that you picked out, in your judgment?

A. Well, I am no judge of timber, that is, to estimate or anything like that.

Q. Did you have an estimate?

A. No.

Q. Did you think about the timber at all when you were going out there to find this quarter?

A. Well, not any more than anybody else. I didn't know what we were going to find when we went in there.

Q. Well, most anybody else would have been looking for timber, wouldn't they, about that time?

A. Why, there were lots of people that was taking timber wherever they could get it.

Q. There was a timber rush, as some of the witnesses have said, about that time, wasn't there?

A. Yes, that is about the time there was lots of timber taken.

Q. And they thought they could get these railroad lands for $2.50 an acre for that purpose among the rest, didn't they?

A. Well, that might have been some people's ideas, all right enough.

Q. Well now, just be square, Mr. Spiker, and tell the real fact. Weren't there several thousand applications worked up there in Douglas County, by Leavengood and Orcutt and the rest of the people out there, and you went in at five dollars a head, and sent your application after you had gone out and found where you wanted to locate? Now, isn't that the fact about it?

A. Well, I don't know as to the facts of the other people; but after this other man and I went in there and looked the country over, why that country is just practically—they talked about very good timber; of course I am no cruiser or anything like that; all I can tell I can tell when I see sticks on the ground, but as far as knowing how much is in them I don't know anything about that.

Q. You can tell when you see a tree that is 150 feet high and 6 feet at the butt, can't you?

A. Oh yes, I know one of those from a small one all right enough.

Q. You recognize one of those from young growth that is six inches at the butt and 25 feet high, couldn't you?

A. Oh yes, I could tell that much.

Q. Don't you think as a simple layman that you could give a pretty good guess whether a quarter section was good for timber or whether it was good for farming, to plow without the timber? Couldn't you tell that?

A. Well, that was owing to how much they would value this timber at.

Q. Well, you wouldn't have to be a blind man to tell the difference between a piece of land that was chiefly valuable for timber and a piece of land that in its present state was chiefly valuable for agriculture, would you?

A. Well, not at the way it would stand, a person could easily tell that.

Q. Did you make a written statement to the government inspector of what your testimony would be in this case—sign a written statement?

A. Yes.

Whereupon witness testified, that he forgets the name of the inspector, and he has not the statement he made with him. He does not remember the description of the quarter section that he applied to purchase at two dollars and a half an acre through his attorneys, but referring to the copy of the affidavit furnished to counsel by counsel for the Government, it was in township 24 south, range 7 west, Willamette Meridian, to the best of his knowledge. He offered to pay the Railroad Company two dollars and a half an acre under this Act of Congress which he had heard about. He does not know that there was any particular value put on that land that he applied to purchase. It was worth enough, in his judgment, so that if a man wanted to make a home, he could make a home in there. It was not worth—it would not be worth in his judgment, at

that time, three thousand dollars or five thousand dollars. One could buy pretty good timber at that time for less than three thousand dollars. He does not know if it was worth two thousand dollars, if he could have gotten title to it. It might have been, if he could have found somebody who would have bought it, it possibly would have been.

Q. I know, it might have been worth $10,000, depending upon the amount of timber?

A. Yes.

Q. But what was it worth in your judgment?

A. Well, I don't know hardly how to answer a question like that.

Q. It was clearly worth $400, what you offered to pay for it, wasn't it?

A. Yes, it was worth that much, or a person wouldn't probably have wanted it.

Q. It was probably worth $1000. You were safe in figuring it worth $1000, weren't you?

A. Why, I should think it would be worth $1000. It might be worth more, as far as that is concerned.

Q. Didn't that quarter section have three million feet of saw timber on it?

A. Well, now, I don't know as to that. I couldn't say that, because I don't know.

Q. You couldn't' say whether it did or not?

A. No.

Whereupon witness testified, that the young growth was second growth fir, and was thick and stood practically thick on the ground so that there was nothing else that would grow in under them, the young growth shades the ground. He does not think the second growth trees, on an average, would be as high as 100 feet, but would be something in the neighborhood of 50 to 75, and from six inches up to eighteen inches at the butt. He has followed farming as a rule the majority of the time, but he is not in that business now and is not on any farm now. He was in the butcher business at the time he was in Glendale riding around on the roads there, and when he was on his father's farm there about a mile and a half west of Isadora, he was just working on the ranch. His father did not take up that land as a homestead, but bought it from a fellow by the name of Sam Whittaker. His father had 480 acres, and he thinks he paid in the neighborhood of about twenty-one or twenty-two hundred dollars at that time, but would not be certain. That land is now worth probably four thousand dollars. There is about seventy or seventy-five acres in cultivation on the farm, and when his father bought it there was just about the same. Those from whom he bought had never cultivated it, but his father had cleared up some of it, cleared up part of it. He would judge they had cleared up fifteen acres on the place since they bought it, which would make from seventy to seventy-five acres in all cleared. He could not say whether that was an old settled place, he does not think it was a donation land

claim, because there were three different people who owned that land as homesteads. He thinks there were three different homesteads filed on it, but does not know when these homesteads were taken.

Q. It was in the early settlement of the country, wasn't it?

A. If it had been very early, they would have put a donation claim on it instead of taking single claims, would they not?

Q. Not necessarily. The homestead act was passed in 1862.

A. Yes.

Q. About six years before this land grant took effect out there in that section.

A. Well, it might have been settled there for quite a while.

Q. If it was 1862, that would be fifty years ago, wouldn't it?

A. Yes. I have heard them say—I have heard people say in that country that they rode over that country there when this young growth stuff that is growing up all over the country now was all prairies.

Q. Yes, in other words, this young fir has grown up within the knowledge of the white settlers, for the reason that before that time the Indians burned the grass and kept it down?

A. Yes, sir.

Q. And wherever the timber has been allowed to grow, within the memory of white men, in that section of the country, this young fir has grown from nothing up to twenty inches at the butt, hasn't it?

A. Yes, I guess it has.

Q. Within the memory of white men now living?

A. Yes, that is the way I understand it.

Q. Are you one of the interveners in this suit, represented by Mr. Leavengood or any other attorneys?

A. No.

Q. You haven't brought any suit to enforce your application to purchase this railroad quarter?

A. No.

Q. Now, did you ever take a homestead?

A. Why, I filed on a homestead, yes.

Q. Where was that homestead that you filed on, in what section, township and range?

A. It was in township 32, range 11 west.

Q. Is that in a timbered belt?

A. Yes, there is timber in that country in places, like everywhere.

Q. Was this piece of land that you filed on an open farm, cleared land, or was it a timbered quarter?

A. No, there was timber on part of it and part of it was burned off.

Q. Did you ever live on it?

A. Yes, sir.

Q. Are you living on it now?

A. No, sir.

Q. When did you file on it?

A. I believe it was in 1906 when I filed on it.

Q. Did you make final proof?

A. No, sir.

Q. Did you let it go?

A. Why, they returned my filing. The railroad company returned my filing. It was on railroad land.

Q. You mean you applied to purchase a railroad quarter?

A. No, it was not to purchase—I filed on it.

Q. How do you mean you filed on it? How could you file on it?

A. Well, I don't know as to that, but they accepted my money, and kept my money for about two or three years, and then returned it to me.

Q. And you kept the money?

A. Well, when they returned it to me, why shouldn't I?

Q. Do you still claim the land?

A. No, sir.

Q. So the trade was off?

A. Yes, certainly.

Q. Did you offer them $2.50 an acre, when you made this filing, as you say?

A. No, it was supposed to be filed on there at that time. There was no offer made at all for it. It was filed on.

Q. How do you mean filing? What did you do to file on a piece of railroad land?

A. Well, there was I and there was a couple more boys; it was unsurveyed land when we first located it.

Q. Unsurveyed?

A. Unsurveyed land; and we went in there and we settled in there.

Q. What do you mean by settled?

A. We went in and made our homes and improvements in there.

Q. That is you took along some coffee and provisions and bacon, and you stayed all night?

A. Well, the necessary stuff for a man to live on in there.

Q. Yes, for a day or two?

A. Well, I guess it was more. I put in the majority of my time for two years in there.

Q. Settling on this piece of land?

A. Settling on that piece of land, which I thought was mine.

Q. I see. Well, what did you do now on this quarter section? Just tell us?

A. Well, I had my house built there on it.

Q. How big a house and what was it out of?

A. It was a house about 14 feet square—12 by 14.

Q. Built out of shakes?

A. Built out of logs.

Q. Built out of shakes that were made there?

A. No, sir, it was made out of logs?

Q. Well, you covered it with shakes, didn't you?

A. Yes, I covered it with shakes.

Q. Made right off the ground?

A. Yes, sir.

Q. Did you furnish it?

A. Yes, sir, we had our stove and our beds.

Q. Did you have your wife with you?

A. No, sir, I am not married yet.

Q. Oh. Well then, what did you do while you were out there? What kind of work did you do on the place?

A. Why, I worked around there trying to fix things up to make something out of it, and make a home there. While we were in there we was working there all the time on our land.

Q. How much did you clear of this 160 acres and

put in cultivation.

A. Why, I didn't—I had about two acres right there where my house was, and there was in the neighborhood of sixty acres of a burn on it.

Q. Did you sow that sixty acres to something?

A. No, sir, it was all—been wild grass growed right there.

Q. Did you have some stock in there?

A. Yes, I had my horses in there was all.

Q. You didn't turn your horses loose in the country, did you, and let them go in there?

A. Yes.

Q. Let them range in there. Were you raising stock horses?

A. No.

Q. You just had a team, you mean?

A. Just had saddle horses in there.

Q. You just pastured your saddle horses? Did you stake them out?

A. No, sir.

Q. You just let them go out in the woods?

A. Yes, sir, turned them out there on that grass. They wasn't very apt to leave it.

Q. You didn't have any cattle, did you?

A. No, sir.

Q. Did you have any hogs?

A. No.

Q. Some chickens?

A. No, sir.

Q. Did you raise any potatoes?

A. Yes.

Q. How many bushels of potatoes did you raise?

A. Oh, I don't know. I raised five sacks in there one year on a little patch.

Q. And finally you gave up these extensive improvements and left that farm and went back to Glendale?

A. Why, when my filing was returned to me, there was no use for me to stay there when I had no chance to get it.

Q. Well, that is what you did—you went back to Glendale?

A. Yes.

Q. And your associates that went out there, they went back to Glendale, or went somewhere else?

A. Wherever they—I don't know just where they went to.

Q. Now, what in your judgment, Mr. Spiker, is this unsold land that you are acquainted with in Douglas County belonging to the railroad company, in these townships that you have been over—what in your judgment is it worth an acre today, or have you any judgment on that subject?

A. No, I haven't, because I never made any estimate of land. In fact, I know a very little bit about the value of land.

Q. You don't know much about land anyway, do you?

A. Well, as far as the prices are concerned, why, I don't. But I think that, to know a piece of land when I see it, I consider I know that much about it.

Q. But you wouldn't know what price to put on these unsold railroad lands from the knowledge that you have of it?

A. No, I wouldn't. I wouldn't know the real value of it.

Whereupon, upon redirect examination, witness testified, that he does not know how long this piece of land that his father had, these three homesteads, four hundred and eighty acres, had been settled. This homestead that he took or attempted to take, to file on, he went out there and settled on unsurveyed land and made a filing in the local United States land office at Roseburg, and when the land was surveyed it was discovered that instead of being government land it was part of this grant and his filing was, therefore refused, that is the way that he understands it. He was uncertain at all times as to whether he could maintain his title to the land. There was an uncertainty because it seemed at that time the majority of the people seemed to think, outside of the twenty mile railroad limit, if he understood it right, they didn't seem to know whether the

railroad company really had good title to the other extension of the limit or not, that is the indemnity limit. At that time, the majority of the people seemed to have their doubts but what maybe a person could file on that land and get it, and he was just outside of the railroad limit. He and his associates wanted that land, they considered that they were going to make a stock ranch out of it, and of course it had to be agricultural land. It has to be agricultural land before one can make a stock ranch out of it. He did not attempt to buy it merely to obtain the timber that was on it for speculation, that was not the idea at all.

Whereupon W. B. SHERMAN, called as a witness on behalf of complainant being duly sworn testified that he is forty-eight years old and resides in Josephine County, Oregon and has so resided about ten years. Prior to that time he lived in Michigan and was born in that State. He has engaged in the land business since he came to Oregon in Josephine and Jackson Counties, very little in Douglas County and he is familiar to quite an extent with the lands in Josephine County. He is acquainted quite extensively in that county, has bought and sold a good deal of land. With the exception of that part of the County which is included within the Forest Reserve, he is acquainted in a general way with the lands in Josephine County and has spent ten years nearly all the time on these lands, and that applies largely to the northwestern part of Jackson County. Speaking geographically he has been in all of the townships of Josephine County, with the

exception of the Forest Reserve and has made a study of the soil and climatic conditions in that county and that also applies with reference to this tract in the northwestern part of Jackson County. He is more familiar in five townships in the northwestern part of Jackson County, township 33, Ranges 2, 3 and 4 west and township 34, Ranges 3 and 4 west. He is well acquainted with all of these townships and in a general way with the townships adjoining them. His purpose in going out over these lands in Josephine County was because he was in the land business, inspecting lands and showing them to purchasers and buying and selling lands. He made his way through the county spending most of his time on lands with a compass, that is, a portion of it, and part of it on the wagon roads and trails using automobiles, horses and buggies in making his trips through the County, the different usual ways of traveling. About seventy-five percent of his time during these ten years has been occupied in that general way out in the field. He has interested himself in the development of that country, has promoted the fruit business, and the poultry business more especially, the grape business and orchard business and has been connected with commercial clubs. He organized first the Grants Pass Mining Association, second, the Grants Pass Athletic Club, third, the Grants Pass Commercial Club, fourth, the Grants Pass Poultry Association, the Josephine County Poultry Association, fifth, the Josephine County Good Roads Association and the Southern Oregon Development League, he was alone

in the Tokay Grape Association. These various bodies, with the exception of the Athletic Club have been engaged in demonstrating, developing and promoting the development of the resources of that country. He is familiar with the character of the soil, the lay of the land and the other climatic conditions belonging generally in this area that he has described and is familiar in a general way with the history of the development of the resources of that district since he took up his residence at Grants Pass and with the manner in which the Railroad Company has disposed of or held these railroad lands in that district. There are three different classes of soil, alluvial soil, red soil and brown soil, or commonly known as granite soil. The brown soil is commonly known as granite soil, sometimes called decomposed granite and porphyry. He thinks the proportion is about one-third of each. The alluvial soil is principally along the river bottoms, not always, but practically speaking. One finds the red soil on the first bench and part of the hill lands and the granite soil on the first bench and part of the hill lands. The red soil is intermingled with the granite or brown soil in places. In a general way, that district, speaking generally, is rolling although they have a great deal of level lands, he is speaking of lands outside of the Forest Reserve. By level lands are meant comparatively level lands, there is no real prairie in that country. He is speaking of Jackson and Josephine counties. He would consider that fifty percent of the land with which he is acquainted in these two counties is com-

paratively speaking, level, these lands that are rolling and which he does not include as comparatively level, can be subjected to cultivation. There are some lands there which are too rough to be cultivated. He would say that in that general district about thirty to thirty five percent are so rough that they cannot be cultivated, or there are other obstacles to the cultivation of the lands so that they cannot be cultivated either on account of their roughness or barrenness, or their general conditions which cannot be overcome. Speaking of that country from a matter of townships, the rolling land and the level land and rough land that cannot be cultivated, are intermingled. Most of these lands, other than the thirty or thirty five percent that he had described as being too rough or otherwise unsuited for cultivation, are in his judgment productive lands and can be subjected to profitable cultivation. The altitudes in that district vary from 1,000 feet above sea level to 2,500 feet above sea level and a few points run to 4,000 feet above sea level. These various types of land, taking up first the alluvial soil, can be used for all kinds of fruit, vegetables, hays and grasses and general farming purposes and they raise some grain, although these lands are more valuable for other purposes than they are for grain. The red soil on the benches and rolling lands are very valuable for fruit and vegetables. For some crops, that land is more valuable than the lands with the alluvial soil and some not so valuable, but speaking in a general way, they are about the same value and about the same can be

produced from them in the way of profit. The brown soil, or decomposed granite soil, can be used for fruit and vegetables, grasses, alfalfa and kale and that soil can be used successfully without irrigation, nearly all of those hill lands are sub-irrigated, by that he means, that the brown soil or decomposed granite and porphyry and nearly the entire district has water under it—from six to eighteen feet is as deep as one would have to go to get water. A man on a small tract, can dig wells and irrigate five or ten acres and make good money out of it without getting water from any other locality. Irrigation is not necessary or indispensable in order to make profitable use of that land for agricultural and horticultural purposes, they can raise one crop of garden stuff on any of that soil the same as they do in other localities, but to raise three or four crops on one piece of ground the same year, it is necessary to have water on some of it and he believes that is generally true all over the western country, as far as his knowledge and information extend, excepting that in other localities, a great many other localities, they cannot raise the second or third crop, as he understands it, even with water. In going over the district he found nine miles out of Grants Pass, a vineyard of about forty acres. After keeping track of that for a term of years he decided that the grape business was a very profitable one for the district and so he decided to form a grape industry. He started in by buying lands that were favorably situated and located for the purpose, cleared them, plowed them and planted them and induced other

people to do the same. He found that these grapes growing in the forty acre vineyard of which he speaks were on the south hill slope, red soil, and he bought and cleared and set out grapes on red soil, south hill slope largely, adjoining the city limits, that is, the tract adjoins the city limits of Grants Pass. He has a vineyard there of twelve acres, set out three years ago, it will be four years in the spring of 1913. These grapes are bearing, they commenced to bear some grapes the second year and got a commercial crop the third year and will increase after the third year until probably ten or fifteen years. Pruned in the proper way, it has never been demonstrated as to how long grape vines will live. The first grapes that were pruned to a stump, as they call it, grew up about twenty four inches and headed there. The first grapevines, as he understands, were pruned that way about three hundred years ago and they are still producing a good crop, but he does not mean that this occurred in Josephine County. He has demonstrated that tokays, and malagas will grow on these lands. The Concord does as well or better on the north hill slope. The product of the tokay grape compared with tokay grapes grown elsewhere is of a very much better quality in their district than in any other part of the United States. There are two districts in the United States where tokay grapes have been grown successfully, the Grants Pass District and portions of California. The tokay grapes grown in Josephine County are superior to the California tokay grapes in color and keeping and shipping qualities, they

are a very much firmer grape and will stand shipment better. In packing them, they put fifty to sixty pounds weight in pressing the tops of the crates down before they nail them. If the same thing were done with the California grape, it would ruin the entire package and it would have to be thrown away. The grapes produced in the Josephine County country have come in competition with California tokays in the Portland markets and they get a higher price for their grapes than is paid for the California grapes. He has seen places where they sell them retail, in Portland at five cents a pound more. They get from twenty five to fifty cents a crate more for them selling at wholesale. The 40 acre vineyard in Josephine County is thirty two years old but these other vineyards are three years old. About ten or fifteen people planted commercial vineyards in Josephine County three years ago. This was their first year's crop harvested this year and marketed locally and in Portland. The experiment of growing these grapes on the brown or granite soil, has been made in the district within his personal knowledge and he has observed that the result was good. It is just as good as the red soil, if any difference better. The brown soil produces fruit and vegetables of higher grade than the red soil or the river bottom soil. The flavor is better and the keeping quality is better and the color is better. Grapes, fruit and vegetables grown on the hillsides are better than similar products grown in lower altitudes. He does not know the scientific reason or explanation of that result, but does know

that that condition exists all over the country. As a rule the hill lands produce better fruit, better quality than the river bottom lands. He understands the same is true of oranges and lemons and nearly all classes of fruits. Nearly all districts have first developed the river bottom lands and then later on, the hill lands. Atmospheric conditions in the hill lands, in the higher altitudes, preclude certain blights that are found in the lower altitudes, in the bottom lands, including what they describe as sap souring. They also have more moisture higher up than they have on the lower lands, which has something to do with it, meaning moisture from sub-irrigation and rainfall both. The cultivation of the roots of the grape vines, brings the moisture up but artificial irrigation is not essential to the growing of grapes. Their grapes are better without artificial irrigaton, that is the trouble with California, that is the difference between the Oregon tokay and the California tokay. They irrigate the California tokay which makes them an inferior grape to the non-irrigated grape. The California tokay when cut with a sharp knife, the juice runs out, the Oregon tokay one can slice off into thin wafers and handle these wafers with a knife like a piece of beef, the tissue of the Oregon grape is much firmer than the tissue of the California grape, owing to that particular point, as he understands it. The flavor of the Oregon grape is good, it is as good as the California grape. The malaga grape has not been experimented with or grown as extensively as the tokay in that district, but wherever there is a malaga growing, it is

doing well and they get splendid fruit from it, splendid results and no other districts in the United States grow malagas, as he understands it. They are just starting in to grow malagas there, until this year there was but a small amount of malagas in that locality, and now they have several different men who have a few acres each. All of the three year old stuff is bearing and he has seen the fruit himself, they had them this year. He started in about four years ago exploiting the growing of tokay grapes in Josephine County, and spent most of his time and energy with the home people getting them into the industry. He took various ways of doing it. One thing he did, he gave the school children throughout the county a grape vine each, rooted vine, and a red stake to stick up by it, and then he gave prizes for the pupils who would raise the most vines the first year, the most length of vines. He gave out over 7,000 vines. They were not all given to school children, but after putting them in the schools, all over the county, he had two men on the streets giving them to everyone that came along that would take them and plant them, wrapping them up one or a dozen or two dozen, just as many as they would take. He gave away thousands of them. He had men for a week during planting season that did nothing but give away grape vines, and they are now being grown all over the county. He has personally seen the results from these vines he gave out, in this manner and has kept pretty good track of them. This was about four years ago. He does not know of any general failure on the part

of those grapes that he gave out in that way. Wherever he found a red stake sticking since, there has been a vine growing. Of course the object of the stakes was to mark the place and to continually advertise to the people passing by it, that where the red stake was, there was a grape vine, and everybody has taken pride in watching the development. They were so well pleased with the results when they came to pick this year's crop, they had their first annual Tokay Grape Festival last month at Grants Pass. There were over fifty automobiles in the parade decorated with grape vines and the fruit itself. Nearly all of the business places were decorated both with fruit and vines inside and outside. He could not say how many grapes were produced in Josephine County this year (1912). He could give an estimate in a general way of what will be the production next year on the lands that are set out to grape vines. They have somewhere, he thinks, between 200 to 300 acres there now. There are 535 vines planted per acre. They would get at least a crate per vine next year. He believes there are 1200 crates in a car. He thinks they would have 100 or 125 carloads shipped from there next year and the product would be worth $1.25 to $1.75 per crate and that would be something like $1500.00 or $1600.00 a car and he thinks there would be next year from 100 to 125 cars. They raised grapes from a commercial standpoint this year, sold them and shipped them. They were shipped all over the United States in single crates and in quantities to Portland. At their Tokay Grape Festival, there

were lots of grapes sold to people and shipped throughout the United States to friends and that is one of the reasons why it is hard for him to estimate the amount of this year's crop. Another reason is that he did not keep in close touch with that feature this year. If his estimate of next year's crop is borne out by the actual results there should be crops there yielding $150,000, in grapes alone next year, and the cultivation of the grape, specially the tokay grape, has proceeded to a point in Josephine County where he is convinced as a practical man, that it can be successfully conducted in that county, beyond a shadow of doubt. He knows, in a general way, where these railroad lands are located in Josephine County and a great deal of them contain lands of this same general condition which would be suitable for the growing of grapes.

Their folks have just learned that the poultry business there in the hill lands is very valuable. They can grow kale on those lands, and if a family has five or ten acres of land, they can cultivate, they can raise 1000 or 1500 hens, and it has been thoroughly demonstrated that they can make a profit of at least one dollar per hen per year. The reason that this community or district is peculiarly adapted to the poultry business is on account of the fact that they have so little rain and so much sunshine during the year. They have about twenty five inches of rain compared with fifty or sixty in the Willamette valley. They do not have the excessive heat in the summer that they do in the Petaluma district, the best poultry district in the

United States. In Petaluma, near San Francisco, California, they make from $1.00 to $1.50 per hen annual profit, at the same time they have to pay from $25. to $35. a ton for green kale and green alfalfa, where they in Josephine County, can raise there on their hill lands without irrigation from twenty to forty ton of kale per acre annually. They can pick their kale 365 days in the year. He means that they can raise on their hill land there without irrigation from twenty to forty tons of kale per acre annually and they can pick their kale 365 days in the year. That is what makes poultry so profitable in that district. He organized this Josephine County Poultry Association referred to, to promote that business. That matter has actually been demonstrated there. There are a great many more days of fog on the lower lands than there are on the higher lands, the higher lands would be more valuable on that account. Referring to the poultry, they have no diseases down there, as they do in other localities. The roup and such diseases are nearly unknown in that district, which makes it a very valuable point in their favor. Such portions of quarter sections as could not be used for the purposes he has indicated, such as for growing grapes, fruit, vegetables, other agricultural and horticultural crops and the raising of poultry could be used for grazing purposes. The higher lands are better than the lower lands for grazing. A settler, if he had 160 acres of that land could handle cows and pigs and poultry and fruit and vegetables. Apples are very productive in that locality, they are high grade, good qual-

ity. The Rogue River Valley, he believes it is conceded, excels the world in the growth of pears and their hill land is very good pear land. The pears grown on their hill lands have better keeping qualities than the pears grown down in the Rogue River Valley proper and they are a better flavored pear and they have a higher color and are of a superior quality and fully as productive. The trees will come into bearing at about the same time as in the valley. The pears do not have the pear blight in that district as they do in other districts, very little pear blight in the district and when they do have a pear blight, if there are signs of it, it is easily disposed of.

Whereupon witness testified:

Q. Well now, reverting to the general question I asked you a few moments ago, Mr. Sherman, taking into consideration these various opportunities that a settler would have to use the land profitably which you have mentioned, are there very many quarter sections in Josephine county, and particularly in that part of the county where these railroad lands are situated, which would not support a settler and his family?

A. There are some.

Q. About what percentage of all of the quarter sections?

A. That would not support a family?

Q. Yes.

A. Possibly 25 per cent.

Q. In your judgment then would 75 per cent of all those quarter sections, if put into the hands of settlers—would they support a settler and his family?

A. 75 per cent, did you say?

Q. Yes.

A. Yes, sir, I believe they would.

Q. Now, do you mean that he could just make a bare livelihood, or do you mean that the settler could thrive under those conditions?

A. He should be prosperous; if he is industrious, he would be prosperous.

Q. Mr. Sherman, you say that you are familiar with the general policies that have been pursued by the railroad company with reference to the disposition of its railroad lands there, and the withholding of them from sale since early in 1903. I will ask you whether, in your judgment, that policy has retarded or promoted the settlement and development of that country.

A. It has retarded development to a great extent.

Q. Now, is that a theory of yours, or have you seen it demonstrated?

A. It has been to me a very expensive demonstration that I have made.

Q. Explain what you mean.

A. I mean that I have spent thousands of dollars to get people to come to our district to locate—tens of thousands of dollars; and I mean that the biggest draw-

back that I have had was the fact that nearly one-half of the district was not available for settlement, on account of the Southern Pacific owning it and would not sell it at any price.

Mr. Fenton: You mean the Oregon & California Railroad Company owning it.

A. Pardon me. I believe that is right—the Oregon & California.

Q. Well now, what experience did you have with these prospective settlers in that respect?

A. Well, when we would take them out to sell them lands, we would take them in our automobiles or in our vehicles, and start out to show them a piece of land, and possibly one to ten miles from the railroad, and there was so much brush land, they would ask: "Well, what is this piece of land? Why isn't this cutlivated?" "Well, that belongs to the railroad company." "Well, aren't they going to sell it?" "No, it is not in the market at any price." And the prospective settler would say, "Well, if I buy this piece over here that you have showed me, will I have to pass through this brush country? Won't I have any neighbors on this land on either side of me? Won't there be anyone here to help build churches and schools and better roads and society, or am I to be here with brush on all sides of me?" And of course I had but one answer to tell them—that I didn't know when the railroad company would put their lands on the market. And that one thing alone has made it very hard to settle people there.

Q. Then I will ask you whether, in your judgment, the effect of the policy pursued by the railroad company in retarding settlement and development there, has been limited to the odd numbered sections held by the railroad company, or has it also extended to the even numbered sections intervening the railroad lands?

A. As I explained, it has made it hard for us to get settlers on the even numbers, because the odd numbers would be uncultivated. It has made it very hard to settle even the even numbered sections.

Q. Well now, to what extent have prospective settlers come into that country during the time that you have been working upon this subject?

A. Well, we have had thousands of people visit our locality. There was for a year or two that our hotels were filled full and running over. They would have to take people out to private houses almost every night in the year for a couple of years there, while we were doing a good deal of advertising and exploiting getting them in there—of course, the little amount that I spent was only a drop in the bucket compared with that spent by commercial organizations and other men in the same line as myself—and the railroad company, the Southern Pacific, have been very good about working with us in regard to that point; they have, as a rule, been ready to do their part of advertising, etc.

Q. Now, I will ask you whether, in your judgment, if these railroad lands should be offered to settlers, that district there would be settled up and con-

verted into homes of settlers supporting and maintaining themselves by the cultivation of their homesteads?

A. If those railroad lands were put on the market, in my opinion, that is, put on the market at a reasonable figure, at a reasonable price, we would have hundreds of people come there and buy those lands, and the district would be developed, which would induce more railroads and the general development of the locality. It has been bad for us in so many different ways, not being able to develop; by holding back the agricultural and horicultural possibilities, it has held out so many other things which would have been for the best interests of the locality.

Q. Mr. Sherman, describe more in detail the extent to which the poultry business is being developed in this district, and what has been done with reference to the transferring of some of the poultry business from this district in California that you refer to to Josephine county?

A. We have had two or three poultrymen come in there in the last two years. One was a Dr. Wilcoxson from some place in the East, and there was a Mr. Steinbach from Alaska, and there was a Mr. Wise from St. Louis—Charles Wise. And they were all three men very well posted in the poultry business, and they found that the hens—

Mr. Fenton: I think I will have to object to this as hearsay if it came from these other gentlemen to the witness.

A. They found that the poultry in that district, that is, the poultry that was what we call the barn lot hens, their plumage and their condition was much better than in any other—than the same class, of course, in any other district. So they went into the poultry business there. We started about a year ago, a little over a year ago—my office started exploiting the proposition; and we had a poultry show on the first of the year, and we got a great many people to go into the business. And there could not be chickens hatched in the district fast enough to supply the demand, so our people sent down to Petaluma and bought the day old chicks by the thousands, and had them shipped up there, and we now have about twenty or thirty people in the poultry business in a commercial way.

Q. Explain what you mean by shipping day old chicks, and how it is done.

A. Well, the day old chicks, they are called day old; however, they are taken as soon as they are hatched, they are taken and put into crates, and shipped the same as eggs. The chick can be shipped—they can be in transit 24 hours. The yelk of the egg when the chicken is hatched is in its stomach, and it furnishes itself food for 48 hours. Their little bills are sealed, as I understand it, and cannot be opened until the expiration of the 48 hours, so that they will stand the transit. And in taking advantage of that, our people have, in order to get a start this spring, bought a great many thousand birds from Petaluma. There is one man got 6000 birds now. Others have from 100 to 1000.

Q. What if anything has been demonstrated there with reference to the production of loganberries and strawberries?

A. Well, strawberries, we can raise two crops a year on this granite soil. We grow the best berries on the granite soil of any soil that we have there. The loganberry, it has been thoroughly demonstrated that we can raise from $300 to $700 per acre worth of berries from the granite soil.

Q. Now, does this granite soil absorb the rainfall readily?

A. Yes, sir, it holds the moisture well. With dry farming process, the granite is the best soil we have in that district. It is better than in the river bottom. It holds moisture better with cultivation, with dry farming, than the river bottom or the red soil.

Q. At the same time, how is it with reference to being muddy, speaking now as to its usefulness in the poultry business? Does it get muddy?

A. No, it don't get muddy and sour like the heavier soil would, which makes it better for the poultry business. You take the birds in the Petaluma district, for several months in the year they have to wash all their eggs—they are dirty. The hens are dirty, all their lower feathers and their wings, and so on, is muddy all the time. They have not any fit place, any fit grounds to keep them on. And that is another point that the Petaluma people claim that we are far ahead of them on, that is, we don't have to wash the eggs;

the eggs are always clean. Another thing with the kale, in feeding them, our kale is always picked fresh, and theirs is shipped in.

Q. Have you had any individual interest yourself with reference to orchard lands there, and if so what?

A. Well, I am interested in one tract of 3040 acres.

Whereupon witness testified that this orchard land in which he is interested, to which he refers, is north of Grants Pass between Grants Pass and Merlin, adjoining the City limits of Merlin and reaching from there to within about a mile and three quarters from the City limits of Grants Pass and parallels the Southern Pacific, or the Southern Pacific runs through it about three miles. They have cleared, plowed and planted about 800 acres to orchard. They have had it two years and so far they have cleared and planted about 800 acres and are still clearing and planting. Railroad lands involved in this suit are all around them. They started in to get a 5,000 acre tract, but the railroad lands would be intermingled so that they could not handle it practically and they had to cut it down to 3,000 acres. These railroad lands which intervene their lands are not of a different type of soil but are the same thing. They are selling these lands for orchard purposes at from $300. to $500. an acre, land that is being planted and the $550. and $600. price is planted and cared for for five years. He believed he had better refresh his memory a little further here, for they have some land

that they have sold at $200 per acre. They plant 580 vines of grapes per acre, that would be nine feet apart. They produce from one crate to five crates per vine and they figure at least a crate per vine, that is very conservative. They got this year on three year old vines, in a great many of them, wherever they had good care, a crate per vine on the three year old stuff this year and they figure $1.00 profit per vine, practically speaking $500.00 per acre. Any of those who are in the business who have harvested their crop this year from three year old stuff believe that is a very conservative figure. They have the United States for a market for those tokay grapes. They could ship them to the old countries, they will stand shipment to the old countries. If all of the lands in Josephine county of the type he has described should be used for the growing of these grapes, the market would get better than it is now. The trees grown on the granite soil, the fiber of the wood is very much stronger than the fiber of the wood grown on the river bottom soil. The tree will carry more fruit with less danger of breaking the limbs. They do not have to look after the propping of the limbs nearly as close or the pruning and the thinning on these granite and hill lands as one does on the river bottom lands. There seems to be as much difference between the fiber of the wood, the strength of the wood, of a tree grown on the hill lands comparing that with hickory, comparing the tree grown on the river bottom with maple.

There have been several efforts made by the local people to induce or interest capital to come there and

build railroads, but so far, it has failed in every case. One of the principal obstacles is the fact that only one, practically one-half of the district, is subject to entry or development, or he means to say, location or cultivation. He does not mean that half of it is subject to cultivation by reason of the character of the soil, but that people cannot buy it, it is not available, cannot be bought, it is not on the market, it belongs to the Oregon and California Railroad Company or the Southern Pacific Company, meaning the lands involved in this suit. He has worked with others, in several different cases, trying to interest capital in building a railroad out from Grants Pass, which occupies the natural strategic position there with reference to the country southwest of it. There is a natural opportunity for the construction of a railroad line southwesterly from Grants Pass through this district he has been describing and on to Eureka in California. There is a route now, he does not know as to Eureka, but to Crescent City, it is all the same, it is right on the Coast. He has not been over the route from Crescent City to Eureka, but across to Crescent City there is a route that engineers report on as being very feasible, and another one down the Rogue River across to Port Orford and Bandon. The route to Crescent City goes in a southerly direction through Josephine County from Grants Pass and goes through this district which he has been describing, including these railroad lands. The fact that virtually one half of the lands tributary to the proposed line of railroad is in the hands of a com-

peting line of railroad, the Southern Pacific Company, has proved an obstacle in his efforts to induce the investment of capital for the construction of a railroad extending from Grants Pass to Crescent City. They have not been assisted by the Southern Pacific in their efforts to secure the construction of this proposed railroad, but have been obstructed on account of the lands. A company coming in there with a view of building a road would investigate the resources of the country, and when it found the thousands of acres of land both timber, mining, agricultural and horticultural, that would not pay tribute at this time and would not know when these lands ever would pay tribute to the railroad, that point blocked it to a large extent. A railroad through that country is necessary for the final development of the real industrial resources of that country. They have mines and timber and fruit lands. There is a smelter sixty miles back from the railroad on the route from Grants Pass to Crescent City for which they have to haul the coke—that is either forty or sixty miles back from the railroad, forty miles he thinks instead of sixty miles—they have to haul the coke to the smelter and haul the matter out, besides all the freighting of all their supplies and things of that kind and it makes it prohibitive to the operation of large bodies of copper ore in that district. If they had transportation close to them, they would be developed and the mines would develop the other resources of the district. He is familiar with the timber resources of Josephine County, in a general way and there is much

saw timber there. It is pretty well scattered over the county however, some of the heaviest timber they have is in the northeast corner of the county. He is not familiar with that part in the Forest Reserve because his business never called him there, but excluding that, his answer is correct. He is well acquainted with Elmer Shank and Mr. W. R. Whipple and their testimony that eighty five per cent of these railroad lands situated in Josephine County involved in this suit are waste lands and unfit for any agricultural or horticultural use is not correct. He would judge that about sixty five percent of these lands could be reduced to cultivation for the different purposes he has mentioned, that is of the total acreage. It is not correct as testified to by Mr. Shank that none of that land could be used successfully for agricultural or horticultural purposes without irrigation. They have been raising fruits on all those kinds of lands and they have not had irrigation on any of them up to this time, excepting he guesses the last year or two there have been one or two tracts there, there has been a little water pumped on them from the river. These different commercial bodies he has mentioned have distributed literature containing the same general information as that contained in his testimony. This literature has been published and distributed by the Grants Pass Commercial Club in co-operation with the Southern Pacific advertising department. The Southern Pacific Company joined with the Grants Pass Commercial Club in the expense, each paying half of the expense of publishing this

pamphlet referred to by the witness. It was published by the Sunset Magazine and handed to the witness by counsel for complainant and referred to by him and hereinafter identified as "Government's Exhibit 125." He could not say if this pamphlet has been distributed extensively, they have been getting out these pamphlets right along every year and to the best of his knowledge it has been distributed extensively. The emblem on page 45 reading as follows: "This booklet issued under the co-operative community plan of the Southern Pacific lines in Oregon. Wm. McMurray, General Passenger Agent. Planned and executed by Sunset Magazine Homeseekers' Bureau, Portland, Oregon," is in all of these pamphlets of that kind that are published under this joint management referred to by him. He has not had any conference with any of the Southern Pacific people as to this, perhaps not as to this one particular pamphlet, but he has in regard to the general advertising campaign that he and his associates carried on for several years. He conferred with Wm. McMurray, the General Passenger Agent for the Southern Pacific Company, lines in Oregon. At that time the Southern Pacific Company usually sent a man down in that district and he, together with their Commercial Clubs, and other men who were interested, shaped up the literature, and he always participated in that work. The lands referred to in that pamphlet as being of "most excellent quality for the growing of fruit, grapes, poultry, vegetables and other agricultural and horticultural use," are of the same character as the rail-

road lands involved in this suit.

Whereupon complainant offered in evidence as "Government's Exhibit 125" this pamphlet, which was received subject to the objection that this pamphlet consisted of unsworn hearsay declarations, of the nature of such literature generally put out by promotion companies, societies, commercial organizations and immigration bodies, in any country at any time, and everywhere, and is therefore incompetent. Which exhibit was received in evidence and is hereinafter set out and described and made a part of this Statment of Evidence and identified as "Government's Exhibit 125."

Whereupon witness testified that during his operations down in that country, he had found so many places that the railroad lands were in the way and blocked development and promotion in so many different directions and entirely different ways that he went to investigating the matter to see if there was not some way whereby they could get the lands put on the market so they could go ahead and develop the district and he had the Congressional reports looked up by his friends and got the language of the grant of these lands to the Railroad Company and counseled with some attorneys about it and they told him that they believed that the lands were being withheld contrary to the language of the grant. The Secretary of the Commercial Club of Portland put him on a program at the State Fair where the Oregon Development League was having a three days session and gave him the subject "Mining in Southern Oregon" and he thought that would be a good

chance to bring up the point of the railroad's ownership of the land and their withholding it from the market and he did so in a speech there. He thinks that was at the State Fair six years ago, either five or six years ago, either in 1906 or 1907, it was in the fall at the State Fair in September. He never had seen, never had heard, of any public agitation upon the subject, and never had seen a word in print in regard to it prior to that time. He gave the language at that time in his speech, he gave the language of the grant, as near as he could get it, and he showed the condition that it was putting the country in, and what the outcome would be if they continued for a term of years and they would be held back and so on. The State papers took it up, the Portland papers took it up and published his speech in full. He believes the Oregonian had it in full on the front page and the other papers had it and since that, right after that, it went to the State papers through other states, and he got copies of his speech sent to him from almost every state in the Union, he guesses, in the next few months. In that speech he took up all branches, how it affected all branches.

Whereupon witness testified:

Q. There has been some testimony here by Mr. Eberlein, who was formerly land agent or acting land agent of the railroad company, to the effect that the agitation with reference to this provision of the grant relating to the manner in which the granted lands should be sold originated at the instigation of timber men for the purpose of forcing the railroad company to dispose of

more timber lands to timber companies. Now, had you heard of any such agitation at the time that you made your speech at Salem?

A. No, sir, there never had—not to my knowledge had there been any agitation of any kind prior to that time.

Q. And was the import of your speech, or its purpose, to force the railroad company to dispose of timber lands in large blocks to timber companies and speculators?

A. No, sir.

Whereupon, on cross-examination, witness testified:

Q. Mr. Sherman, prior to the time of this alleged withdrawal of these lands from the market by the railroad company in 1903, as assumed by counsel for the government, was there any objection, to your knowledge, to the manner in which the lands of the company were being offered for sale in Southern Oregon, and particularly in Josephine county, and as to the liberal terms upon which these lands could be purchased for at least twenty years before that period?

A. I was not familiar with conditions before that.

Q. Well, you know, do you not, that there was general satisfaction with the way and manner in which those lands were sold for a period of twenty years prior to 1903?

A. You see, I came here at that time.

Q. I know, but you knew from investigation, did

you not, that if the company would recur or go back to the methods of handling the land as they did prior to 1903, the people would generally be satisfied?

A. I don't remember of any discussion on the point.

Q. Well, you know, do you not, historically, that prior to 1903 the company offered these lands for a period of more than twenty years to anyone who would care to buy, in tracts of 160 acres or less, on liberal terms, at low prices and on long installments, and that the lands remained unsold practically up to the time you came to Grants Pass? Do you not know that to be a fact historically?

A. Yes, sir.

Q. Do you not also know, Mr. Sherman, that for a number of years preceding 1903 any land that was claimed to be mineral in character that had been patented to the company, and had nothing in it or on it other than a mineral possibility, and was not valuable for timber or for agricultural purposes—that such lands were sold to the first applicant or occupant at a flat rate of $2.50 an acre under quitclaim deeds uniformly by the company?

A. Why, of course, I was not here in those days, but I learned you are speaking of history?

Q. Yes.

A. I learned through the people there that if the railroad company found there was any mineral or anything of that kind, they withdrew them and did not sell

them to the applicant. That is the general impression that I have got.

Q. From the people who wanted to get them?

A. Yes, handed down.

Q. Well, haven't you got that impression since this alleged withdrawal of 1903?

A. Well, of course, I learned but very little of the details of the proposition until I came to the coast.

Q. When was that?

A. That was about that time, sir.

Q. About 1903?

A. Yes, a little before that. But I started to looking around and getting ready to buy something. I came here to buy railroad lands, and about the time that I came here they were withdrawn from the market.

Q. Well now then, suppose that the railroad company would now place these unsold lands upon the market, to be sold at private sale, upon reasonable and easy installments for deferred payments, at a reasonably low rate of interest, to whomsoever would buy, and particularly to people who might desire to buy tracts of 160 acres or less, and the price should be placed at what the lands are today actually worth in the market, do you think those lands would be sold under those circumstances and generally purchased?

A. I do.

Q. If that were done, do you not think also that it

would meet with the approval of your people, and the people of your county and Jackson county?

A. I believe the people of our county would be very glad to have those lands put on the market at a reasonable price, because it would not only mean immediate settlement of the lands, but it would mean the settlement of the other lands and the raising of the valuation of the other lands adjoining it.

Q. You mean that it would mean the immediate settlement of such lands as were suitable for that purpose?

A. Yes, sir.

Q. It would not mean the immediate settlement of that 35 per cent of these lands that you thought were of no particular value?

A. No; but the larger portion of the lands would be settled in a very short term of years.

Q. That is to say, they would either be settled or purchased?

A. Yes. Well, settled and purchased.

Q. You would say purchased rather than settled, wouldn't you?

A. Purchased and settled too.

Q. I know, there would be some people that would settle.

A. Yes.

Q. But a great many people would buy and would not settle, but would improve in one way or another?

A. Yes, sir.

Q. Now, isn't it true, Mr. Sherman, that one of the sources of irritation in 1906 was the inability of mining prospectors to secure title to these railroad lands where it was believed there were good mineral prospects, and didn't that interfere with the business of locating mining men on these lands, and was not that a source of public irritation in Grants Pass and Medford and other sections of southern Oregon?

A. The only agitation there was on account of its holding the country back in its entirety, not in mining particularly, or timber particularly, nor horticulture nor agriculture, but the whole country was being held back.

Q. I know, but don't you know as a fact that there were quite a number of people who desired forties and twenties where they thought there was a mineral prospect, but had located it on what they found to be railroad land, and they could not make any purchase of that land, and they were compelled either to contest the company's title, it being patented and, as they claimed, not belonging to the grant, as the mineral lands were excepted from the grant, and that that was the source of a good deal of irritation and public discussion in 1906, and particularly in the election in 1906?

A. I never knew of any discussion in regard to the matter.

Q. Don't you know that that was the discussion in the canvass in Jackson county at the election in June in

1906, when Evan Reames was running for representative?

A. Well, I didn't know very much about Jackson county at that time. I had not got into Jackson county so much, and it was about that time that I commenced mixing up with the commercial organizations.

Q. You didn't figure yourself in politics at all?

A. No.

Q. You were a promoter rather than a politician?

A. I was not a politician.

Q. You were engaged in the promotion of your enterprises?

A. Yes, sir.

Q. And have been ever since you have been in Josephine county?

A. Yes, sir.

Q. Now, I call your attention to the first page of Government's Exhibit 125, which shows two large trees which I take to be sugar pine, and will ask you if that is the first industry or the first asset in a state of nature in Josephine county—timber of that character?

A. Well, the first that was made any use of was not timber.

Q. What is that?

A. The first that was made any use of was not timber. Agriculture and horticulture was the first.

Q. I am not asking you that, because Josephine

county was settled more than fifty years ago.

A. Yes, sir.

Q. And the Rogue River valley through Josephine county has been taken largely under the donation act?

A. Yes.

Q. And orchards and grain and stock were produced there in the fifties. I am not referring to that.

A. Oh yes.

Q. But I am referring now to the chief asset of Josephine county in a state of nature as being timber. Now, isn't that true?

A. Not in my opinion. I think, Judge, I could convince you that a man could make more money in ten years off ten acres of grapes on a south hillslope than he could out of a thousand acres of timber. I think I could convince you of that.

Q. Do you know that Mr. James J. Hill, said to be the greatest living actual railroad builder in the world today, states that an acre of timber is the best basis of tonnage of a railroad that there is today in western Oregon?

A. Well, an acre of timber in western Oregon would mean at the minimum 25,000 feet of lumber—twenty to 25,000, or a carload. Now, we can produce a carload of grapes every year off two and a quarter acres of grapes. Now, the timber is one crop for all of our lifetime, just as for generations it takes to grow that carload, that one crop of timber; but on two and a half

acres of grapes in one year we can produce a carload of freight, and do it every year right along.

Q. I call your attention to the fact that your literature, put out by your commercial club at Grants Pass, advertises Josephine county as containing nine billion feet of standing unsawed commercial timber. Is that true?

A. Well, I think that is a little low.

Q. A little low?

A. Yes. I went over it here in the last two months, and I think there is more timber than that.

Q. More commercial timber?

A. Yes.

Q. I refer, not to the timber which the government has reserved in its reserve in Josephine county, but I refer to commercial timber that is owned by private parties.

A. Well, my answer was to all the timber in the county in regard to the nine billions,—a little over nine billions of feet.

Q. You know there is such an advertisement, or was last year, sent out by your commercial club to that effect, was there not?

A. Yes, it has been put out. It has been handled for two or three years.

Q. I would like to ask you where this mature orchard near Grants Pass showing careful culture, on page

seven of Government's Exhibit 125, is located, and whose orchard that is, and on what land is it, what donation land claim, if you know?

A. Why, this is five acres of Spitzenberg orchard —I cannot read it there; but that looks to me—I took the picture—

Q. You were the photographer that took it, or you supervised it?

A. I supervised it. I made the pose for the picture. This is one Spitzenberg orchard belonging to Mr. Hull, then belonging to Mr. Anderson.

Q. Where is it? On what land?

A. Well, now, by referring to my map I could tell the section.

Q. Yes, just refer to your map and give us the section, township and range that that orchard is on.

A. Yes, that is the orchard. I sold that property a couple of times now. I ought to know the description of it, but I don't. (Witness refers to map.) I believe that is in section 15, township 36 south, range 6 west.

Whereupon witness testified that the property last referred to is about three miles from Grants Pass, but he could not say upon whose donation land claim it is. It is a half mile from Rogue River in the valley and he would suppose that it has been settled for forty or fifty years, the orchard is twelve or fifteen years old, he does not know as to how long it has been settled, but it is one of the early places. Referring to page 12 of "Govern-

ment's Exhibit 125," which purports to show "Well drained hillsides of Rogue River valley," and which shows a vineyard, that is Carson's vineyard. It is hard to tell what section, township and range that is in. Tokay Heights is the property of witness. The tract referred to at page 12 of "Government's Exhibit 125" is Carson's vineyard, which is twelve miles from Grants Pass on the Applegate, it was a forty-acre vineyard, it is now sixty acres. That is the old vineyard that is over on the Applegate about twelve miles south of Grants Pass. The Applegate is one of the oldest settled portions of Jackson County. This land was not taken up under the donation land law, most of the valley land was taken under the donation land law. This land is on the foothills just up above the bottom. Thirty-two years ago Carson planted the upper part up here of this vineyard. Carson has grubbed a large portion of this vineyard lately because it was not of a commercial variety. Carson has never shipped a carload lot because he has never had a car of tokays. Mr. Carson's half acre was all they had to start with four years ago, now they have large tracts of it, he would say something between two and three hundred acres now scattered around over the different sections in favorable places. Referring to these "Mammoth pumpkins bearing witness to the fertility of the soil near Grants Pass," on page 13 of this pamphlet, this is on the Rogue River at the mouth of the Applegate, the junction, twelve miles below Grants Pass, in the old settled part of that country, settled probably forty or fifty years

ago. Referring to the words "Second growth of alfalfa. Yield averages seven tons a year," page 14 of "Government's Exhibit 125" this is about twelve miles from Grants Pass in the Rogue River valley on the low lands or the level lands and is on an old settled donation land claim, he could not tell the man's name, he could pick out the section of land it is on, but could not tell the name of the owner, he knows him well by reputation and sight. Looking at page 15 of "Government's Exhibit 125" which gives a photograph of a "Herd of Jersey cows which returned an income of $110 each for 1910," this is the Williams Creek bunch. Williams Creek is a tributary of the Applegate, he believes, but is not sure, not positive, that would be a part of the Applegate country and is an old settled part of Jackson County, probably a donation land claim in the valley, but he does not know as to that. Referring to page 16 of "Government's Exhibit 125" "Orchard of mature Spitzenbergs, near Grants Pass," this is the same orchard identified by him before, but is a different view. The orchard shown on page 17 of "Government's Exhibit 125" is not another view of this same orchard. He is trying to see who the man in the photograph is, he had most of these pictures taken, he can tell by the man as to whose orchard it is, it is in the Rogue River valley, he would suppose on the bottom there because of the size of the trees, not exactly that, in one sense that would answer that because their people did not know until just lately that the hill lands were as valuable as they are.

"Q. As a promoter you have been trying to teach

them that fact, haven't you?

A. I have done it, judge."

He cannot identify the orchard shown on page 18 of "Government's Exhibit 125" but it is in Grants Pass, but he cannot identify it. Grants Pass is situated on the level land there on the Rogue River and has been settled a great many years. The orchard on page 19 of "Government's Exhibit 125" entitled "Eight year old pear trees in a highly profitable orchard" is Scoville's orchard up on the hill about three and a half miles north of Grants Pass and between 1600 or 1700 feet contour and is one of those orchards up in the cove, up on the hill and has been an orchard about eight or nine years he thinks. It is on the right between Merlin and Grants Pass, is not in one of those little coves between Merlin and Grants Pass, it is not on that road, it is to the right of that road, it is on what they know as the Granite Hill road. This is red land, that is the red soil. This land was timbered, there was oak and laurel, cedar, fir and pine on it and some saw timber he thinks but that was before his time, but the other land adjoining it, he knows the conditions there all around it and there is scattered saw timber. This is about three and a half miles north of Grants Pass. He has different kinds of pears, principally Bartletts. The vineyard described as "Vineyard of Tokay and Malaga grapes containing 65 acres," shown on page 20 of "Government's Exhibit 125" is another view of Carson's vineyard over on the Applegate, that is the Carson vineyard referred to by him awhile ago as having been there a great many years. They started to plant it thirty-two

years ago. They put in a half acre of tokays and now they are grubbing up everything else and putting in tokays on the entire place. The "Young orchard containing an inter-tree crop of corn" shown on page 21 of "Government's Exhibit 125" he cannot recognize any of the mountains shown on that photograph or that orchard, all small orchards look alike and he would have to pick out something in the background or so on, so he could tell one from the other, and he cannot tell whether that is in the place that is indicated or not. He sees these large mountains there in the distance but cannot recognize them. He sees some telegraph poles, there is one close to the tree, but does not see any more, and the distance between the trees, there should be if it was a post, he cannot locate that. "Panoramic view of the Rogue River valley, showing especially Josephine County and the location of Grants Pass relative to the tributary country," shown on pages 24 and 25 of "Government's Exhibit 125" is not a photograph, that is made, evidently from a cast of some kind by the artist, it is not a photograph, it does not do justice to the locality and he thinks the maker was a mighty poor artist. It does not show much of anything except the line of the railroad and the stations and it shows Ashland, Medford, Central Point, Wilderville, and so on, and it shows Grants Pass as the center of the picture. The Oregon Caves are about forty miles from Grants Pass. The picture does not purport to be a birds eye view of that country. The picture of the forest "In the depths of the Forest in Josephine Coun-

ty," on page 27 of "Government's Exhibit 125" is a very ordinary picture of a very ordinary piece of timber land. If the trees stood as thick as that, from the size they appear to be that would be pretty heavy timber, and would be good. There are so many conditions in determining what a timber quarter like that would be worth. They are paying from $1.00 to $1.50 and $2.00 a thousand stumpage for timber with reasonable convenience for transportation where it could be logged in the present or immediate future. He does not recognize the tree or the location of a "Three year old peach tree filler in apple orchard, Grants Pass" shown on page 34 of "Government's Exhibit 125," he does not recognize the location, the tree takes the whole picture and he cannot see anything of the location, one tree looks like another. The picture "Winesap apple tree on orchard producing $1000 per acre," shown at page 35 of "Government's Exhibit 125" is on the Eischman orchard on the Rogue River, south of town. He cannot agree with counsel for defendant that that is an exaggerated statement of some famous tree in the old alluvial portion of the Rogue River valley used as a sample of exploitation, as he has kept track of the orchard. This does not state that these trees are eight years old and he knows the ranch to be eighteen years old from hearsay. He believes that orchard did produce a thousand dollars an acre two years in succession and land that would produce $1,000 an acre ought to be worth $4,000 an acre, but he does not know of any selling for that sum and never heard of any selling at that price. He was speaking of what it ought

to be worth, what it would pay twenty-five per cent interest on, it ought to be worth that much money. Referring to "Flame Tokays—Mediterranean grapes returning $350 per acre," shown at page 43 of "Government's Exhibit 125" he could not answer whether these are grapes shown in the ground or are fixed, to put in the picture to be taken after they have been gathered, he could only answer from the appearance. He had nothing to do with the taking of the picture and he does not know where this picture was taken. He would not say that the grapes were fixed to put in the picture to be taken after they had been gathered. He had seen tokays that were just as heavily loaded as that and he does not think that that has been arranged and thinks that that might be taken showing an actual vineyard in a state of nature. He has seen grape vines just as heavily loaded as that. There is a box at the foot of the picture there that has been picked, but the others have all the appearance of being on the vines and it looks very natural. He could not tell whether these are from Mr. Carson's orchard or not. There is only the vine of grapes and the man to recognize, so he could not tell. He does not recognize the man and he had nothing to do with taking the picture. Tokay grapes were not shipped this year by the carload. They shipped them by freight and express, none by carloads this year. He does not know how many pounds of grapes have been shipped or how many crates have been shipped this year. There were a great many shipped by friends to friends elsewhere in single crates, a great many used in the district and a great

many shipped. This year being the first year that all those bunch of fellows raised any grapes, they did not understand the proposition and they did not put dry sulphur in the bloom of the vines when it was in bloom, and if they don't—that is the only thing they have to do to grapes, the only doctoring they have to do, they mildew as a result of not putting the sulphur in the bloom, the grapes mildew, the only thing that has to be done to grapes. The grape is the most simple fruit to raise of any, but it has a mildew. A tokay grape has its pest and sulphur must be put in any time within a week or two or three, or else it will mildew.

Whereupon witness testified:

Q. That is what I mean. Now, you spoke about the development of copper mines being retarded. Do you not know that for forty miles almost in length in Siskiyou County, and certainly within a radius of forty miles, the great copper plants at Kennett, along the line of railroad between Sisson and Redding have desolated the country so that there is hardly a living tree or a living thing growing; and that it has been enjoined as destructive of all other industries?

A. I understand that the Kennett people—that is one thing that our people have been working on; that is why we are so anxious to have a railroad run through to the coast, and run out on one of these points, and put their smelters on the point, so the ocean breeze will carry those fumes of the smelter to the ocean, and we can get a market for the copper.

Q. If you do that, the prevailing winds are from the ocean, are they not—not from the land?

A. That depends on the locality. Now, there are two localities that the prevailing winds are all off shore.

Q. You would have to get it right over on the coast, then, wouldn't you, your smelter?

A. Yes, sir, it would be over on the coast.

Whereupon witness testified that they would have to have another railroad, they could not handle this ore without other railroads. They would have to transport the ore from the mines to the smelter as it is always done. There is no complaint of the smelter at Waldo. There is quite a settlement there, a small settlement, it has been a mining country for fifty years at Waldo. W. J. Wimer operated a store there for twenty years. They still extract a good deal of gold there in pockets and quartz around Waldo. He does not remember what the 3040 acres of orchard lands cost them now, they bought of a great many different parties and one 200-acre tract at $12,000, paid $4,000 for 80 acres, $5,000 for 160 acres and $40 an acre for 80 acres. He remembers the high priced ones and some of the low priced ones. He has put out 800 acres of that into orchard and the trees are one and two years old, and they are proposing to sell these now on a five year contract, care for them in parcels of five and ten acres or whatever anybody desires. Some of the people are moving on to the grounds and they attend to them just the same. It was their idea when they started in, to sell mainly to non-residents, but there are a good

many people moving onto the tracts. There was one set of buildings built there by one party costing $10,000, close to the railroad, as one goes down from Merlin, right on the edge of Merlin. Part of that is bench land, part of it is hill land. The pictures in their pamphlet (witness produces a pamphlet) are rather general of the district, their pamphlet is descriptive of the district. Their orchards were young when this pamphlet was gotten out, referring to this pamphlet which was gotten out before they planted any orchards, or about the time they had started to plant but they did have one or two little orchards. He does not know but what their pictures might be in there. $200 and $300 an acre was land that they were selling just as the land stood and when they put the trees in and gave a five years' contract, they asked $550 and $600 an acre, with interest on deferred payments at six per cent per annum. This pamphlet was published when they first started in. He did not know but what there might be one or two little orchards there on the tracts there in this pamphlet, but he does not find any. The railroad of the Oregon and California Railroad runs right through, it is twelve miles from Merlin to Grants Pass. Their tract is five miles long, he believes. The Southern Pacific Company has land between them and Merlin. The Country Club Orchard tracts is the same as Laurelhurst, and it belongs to the Rogue River Orchard Company, a corporation, of which he is one of the owners. W. T. Reed and F. E. Reed of Kansas City and F. F. Williams of Portland and S. D. Williams originally of Portland but now superinten-

dent of the works and living at their Club House, are interested with him in this property, the five own the property. They have built a $10,000 club house on these lands and he supposes they have put into this proposition from $150,000 to $175,000. They have spent very little advertising, comparatively speaking. They have done most of their work on the grounds. This is one pamphlet they put out and they put out a poultry pamphlet.

Q. Well, it is pretty well advertised because of this fine country club as the railroad goes by, isn't it?

A. Yes, sir.

Q. With its green roof and beautiful pergola porch, and everything of that kind?

A. Yes, sir. We feature the fact that the Shasta Limited passes through our holdings.

Q. Don't you feature the fact that the other trains also pass through there in daylight, some of them?

A. Well, we speak of the Shasta Limited.

Q. I understand; but the other trains do pass through there in daylight?

A. Oh yes, sir, they do pass through, but we don't advertise it as a special feature.

Q. We common people have to travel on the other trains—we can't travel on the Shasta.

A. Yes, sir.

Whereupon defendants offered in evidence the reduced map of this Country Club district and environ-

ments as a part of the testimony of witness, marked "Defendants' Exhibit 372," which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and marked "Defendants' Exhibit 372."

Whereupon witness testified that these "day old chicks" do not start before they have broken the egg shell but when they are hatched, when they are out of the shell, that is he means to say as soon as they come out of the shell in incubators, the chicken comes out of the shell in the incubator and they take the youngster as soon as he comes out of the shell and put him in crates and ship him, that is, if he was born this evening and he kicks the shell off, the next morning he starts on his journey and is shipped in a crate from Petaluma, California, near San Francisco, to Grants Pass, over the Southern Pacific, which is a pretty careful road. They appreciate what the road has done for them, the company sent special wires and kept track of these shipments and posted them and the Company was very nice about it and they appreciate it too. One has to raise the feed for these chickens, their green feed and have to have good soil for them on account of raising their feed, otherwise it is very expensive.

"Q. If you had a little bottom land, you could raise the feed and haul it to them, couldn't you, just as they do at Petaluma?

A. They do that in Petaluma.

Q. They could do that here?

A. Yes, not and make as much money as we do, but it could be done."

The number of acres necessary in the way of feed, to successfully operate a chicken ranch on one of these foothill tracts, would depend largely on the number of chickens that one handled in the year, and also would depend upon whether one produces his own young chickens, whether he has kept his chickens over. For the general utility bird, utility ranch, where one buys his chickens and does not keep a hen until she is past two years old, it is very much less than it would be if one did all the work, if one specialized on it. Vetch is not particularly good for chickens, but two or three acres of country kale, this thousand headed kale that they can grow twenty or thirty or forty tons per acre, that will keep a lot of hens. Two acres of kale is a nice little patch. They are just starting into the chicken business in Josephine County in the last year or two.

Q. Now, this granite soil has degrees—some of it is so nearly complete granite and porphyry that it would not sprout a white bean? Isn't that true?

A. No, that is not true.

Q. Well, there is always some soil, some earth, besides the granite in this granite soil, isn't there?

A. I understand, and I see from observation by being along the Southern Pacific Railroad that the granite that they blast out of the granite pit up a mile and a half or two miles above Grants Pass, and ship it all along for ballast—I learn from observation that stuff grows in

that, and they have to keep weeding it out?

Q. That is to say these station yards, where we use this granite for walks, would be good to raise fruit and crops, do you think?

A. That soil would raise stuff of that kind.

Q. When you get water on it, why, it will grow anyway?

A. Yes, sir. That stuff is not in place. But you take our granite, which is in place, and by dry farming you can produce almost anything on it. But that stuff of course is not in place, and if it is not too thick, too deep so but what this moisture can work up through it.

Q. Don't you know, Mr. Sherman, that a good deal of this hill land around Grants Pass there has scrubby pine on it, and chaparral and stuff of that kind, where this granite land is, and that it would hardly support a goat in a state of nature.

A. Judge, that has been the opinion of a great many people, but they are learning that that is not true. They find that that soil is getting to be the best known, the best soil that we have. People are getting so they would rather have that than the river bottom soil. For me, I would rather have it—much rather.

Q. And your opinion of the value of these lands and of their utilization is based upon that impression which you have of this granite soil and other soil?

A. From observation and from experiment—experimenting with it.

Q. Now, what in your judgment is the value on an average of all of these unsold lands in Josephine County, and those in Jackson County about which you have testified? What would you say was a fair average price, if the railroad company was called upon as an owner, now, in good faith to put a price on these lands in 160-acre parcels; averaging it all over the unsold lands that you have testified about, particularly in Josephine County, what, in your judgment, would be that fair average price or market value?

A. Why, Judge, I couldn't answer that question right off, but I can point you to a great many different sections and quarter sections and forty acres that I know the values of them, that is, comparing with other lands adjoining.

Q. What would they be worth, the best price now? Take some of the best, what would it be worth an acre in quarter sections?

A. Well, your company have lands there that are worth from $100 to $200 and $300 per acre.

Whereupon witness testified that he would not put any value on this thirty-five per cent of the lands which he says would be of no value for any particular purpose, except for grazing, it is good for grazing, it would have some value for grazing, although it is rocky, steep and precipitous and too rough for tillage. That land for grazing purposes now, there would be other features to come in there, in fixing the price, in his judgment. If a man owned other land near it so he could use that for

grass, and then have another piece to raise stuff for his stock and so on, it would be more valuable than it would be otherwise but if he went to pick it out he would have to take the good with the bad, and if one had 160 acres of that land and could not pasture his stock outside, and let it roam up into the mountains, he would have to consider that when he came to pasture them. A good deal of the land up there is pastured now by ranchers and farmers outside, but this is not one of the chief elements or sources of their living, that is stock raising, it should be, but it is not. Some of these people who are up in the foothills and mountains away from the railroad, away from transportation, away from Grants Pass, are stock men back in there.

Whereupon witness testified:

Q. There are not many of those fellows up there raising Tokay grapes, and getting $500 an acre, are there?

A. No, sir, those fellows up there are not. Those fellows up there are mainly stock men.

Q. People experimenting in grapes and intending to go into the business are down next to the railroad, near the towns where they can get market?

A. The grape don't make so much difference about shipping as an apple or some of the other fruits.

Q. I understand, but as far as your knowledge goes, the experiments are being conducted along close to the line of railroad?

A. Yes, all the way from one to twelve miles from the railroad.

Q. The twelve miles is over as far as this old orchard of Mr. Carson's?

A. Yes, Mr. Carson's orchard is twelve miles.

Q. You refer to the twelve mile orchard as that one?

A. Yes, sir.

Whereupon, on re-direct examination, witness testified that these railroad lands in there were patented at different times. There were a great many of them contested for mineral and those patents were held for a considerable time and there was some of that land which was not surveyed and it was not patented until after being surveyed, and all that kind of thing. It was patented at different times as he understands it. He thinks that most of the patents have issued just of late, in the last few years. He believes that the Company has sold on contract, that is his understanding.

Whereupon, on re-cross examination, witness testified that he has a copy of his address made in September, 1906 or 1907, at the State Fair pasted in his scrap book and he thinks it was printed in the Oregonian. He knows there was one or two of the Portland papers which printed it in full. They asked for his likeness and he gave it to one or two of them and one of them he did not give it to. He did not have his address printed in pamphlet form, he had nothing to do with it whatever

and was very much surprised when he found that it got the attention that it did. It was printed in the Oregonian or Telegram, in two of the daily papers in Portland. He thinks the Oregonian was one and he thinks it was printed as his speech all the way through.

Whereupon, on re-direct examination, witness testified:

Q. Now, Mr. Sherman, your attention was called to the Hull orchard in this picture. That is, a photograph of which is in this pamphlet, which is located on section 15, township 36 south, range 6 west. Now, the bill of complaint in this case shows that in that same township there are railroad lands in section 9, which corners on 15, 480 acres; section 11, which also corners on 15, 200 acres; section 23, which also corners on section 15, 400 acres; section 21, which also corners on 15, 277 acres; and a large amount of land in the other odd numbered sections in that township. Do you know whether these railroad lands that I have referred to, and particularly in sections 9, 11, 21 and 23, which corner on 15, are of a different character from the lands which are included in the so-called Hull orchard?

A. Yes, they are, part of them—pardon me for looking at my map.

Q. I direct your attention to the other odd numbered sections in that township, and particularly sections 9, 11, 21 and 23.

A. Yes, sir, they are all of a different nature than the soil in section 15.

Q. What is the character of the soil in these other lands?

A. Well, there is some of two of those sections about the same soil, but as a whole, they are part of them red soil, and part of them is the brown soil; a small portion of them is river bottom soil, the same as the other.

Q. This in 15, is it all river bottom soil?

A. Nearly all. Well, there is a portion of that runs up.

Q. Well, where the orchard is, is that all alluvial soil?

A. Yes, sir. That is where he had 38 boxes of Spitzenbergs from one tree.

Q. Now, counsel for defendants has asked you with reference to the various orchards illustrated in this pamphlet, Government's Exhibit 125, if they are not all on the alluvial bottom lands and on old donation claims and old settled parts of the county. I will ask you whether it is a fact that all of the orchards and vineyards there are on lands of that character?

A. No, sir.

Q. About what proportion of them are on different kinds of soil, and what is the general history of the development of the fruit and grape culture there in that general district concerning which you have testified?

A. Why, that district, like all other districts, the first planting they did was on the river bottom lands.

That is characteristic, as I understand by studying the history of all districts that I have looked up. They first go on to the river bottom lands and plant their orchards and vineyards and so on, and then they go on the hill lands. Now, we have gone to our river bottom, and we are going to the hill lands. We commenced several years ago.

Whereupon witness testified that there are producing orchards on the hill lands. The river bottom lands have frost down there in that country and they have to smudge. The hill lands do not have the trouble with the frost, they have to smudge, in any apple growing district, good apple growing districts they have frosts. It takes a frosty district to produce a good apple, that is the history of the apple business in the United States and all over the world, as far as that is concerned. Wherever one has an apple orchard district, one has frost to contend with. The river bottom lands are very much worse than the hill lands. Frost is like boiling water, as long as one keeps it stirring and moving, it don't settle, but as soon as one stops it on flat lands, in a pocket, then it settles and the frost gets the fruits. This pear orchard of Scoville's is on red hill land. There are railroad lands in that vicinity, and there are railroad lands of the same character as the Scoville lands and he does not know of any reason why the railroad lands could not be used for the same purpose as the Scoville lands. This mildew on grapes of which he spoke is not peculiar to the Grants Pass district, but is general all over the world, any grape should have the use of dry sulphur, and it is not peculiar

to the tokay grape, that is one of the processes that has been developed by experience to prevent mildew in grapes. It is the one pest, the only thing they have to contend with in rgard to grapes, and they have that same thing to contend with elsewhere. He is not very much familiar with the copper industry in Montana.

Whereupon witness testified:

Q. Do you not know that the mines at Butte, a very large percentage of the ore is shipped by the Amalgamated Copper Company to Anaconda, a distance of some 24 or 25 miles to be smelted, and about as large a proportion shipped from Butte clear to Great Falls, a distance of over 200 miles, to be smelted?

A. Isn't it a fact that the ore, smelting ore, in order to get the proper flux has to be shipped in from a great many different mines, and isn't it a fact that hardly a smelter in the United States is on the ore body itself, and isn't it a fact that it all has to be shipped?

Q. I want you to answer that. Is that your understanding?

A. That is my understanding of it.

Whereupon witness testified that he has heard of the large smelters of Great Falls, Montana, operated by the Amalgamated Copper Company and knows that it had for a great many years the largest copper smelter in the world.

Whereupon witness testified:

Q. And Great Falls is the quotation grade of cop-

per the world over today—quoted abroad as "Great Falls or better?" You know that, don't you?

A. I knew that that was used as a standard. This proposed line, they would take right through our copper belt, from Grants Pass to Crescent City.

Whereupon witness testifed, that he knows of instances where these unsold railroad lands are worth from $100 and $200 to $300 per acre for use for agriculture and horticulture and that has no reference to their value for timber or mining or anything other than agriculture and horticulture. These lands join the city limits of Grants Pass on two sides. The railroad lands adjoining Merlin, are more valuable and the Company has lands back a few miles from the railroad that would be worth $100 an acre, $50 an acre, $40 an acre. The lands that are closer to the railroad are worth more than those farther back. The difference is on account of transportation, and there is no other difference, so that if transportation facilities should be provided, that difference would be to that extent wiped out. He knows of a great many tracts of railroad land worth from $25.00 up, a great many tracts up to $50 per acre for agricultural and horticultural purposes and that could be sold for that if offered. He does not refer to their value for timber, he is speaking of horticulture, and agriculture exclusively. They are worth more for that than for timber, timber would not be worth that much. This thirty-five per cent of land that he says has no particular value except for grazing purposes in connection with other lands is

scattering, it is the points and ridges, the tops of ridges along the high lands. There are quarter sections of that character of land, as to entire sections there would be a long strip, perhaps, up the ridge, something of that kind, but it would not include any one whole section, it would be a section in acreage or area, a whiplash proposition, a long strip of land.

Whereupon witness testified:

Q. Now, you are more familiar with this general subject than I am, Mr. Sherman. I don't want to detain you any longer unless you have in mind something to explain with reference to questions that have been asked you, either by Mr. Fenton or by myself, that would throw any light upon these general questions that have been put to you.

A. I see, a great many questions Judge Fenton asked in regard to cultivated lands or donation lands—I don't know that the lands that he referred to are all donation lands. There was very little clearing and developing done in that district after the construction of the railroad for a term of years. The way I would explain that would be from the fact—

Mr. Fenton: How do you know this, Mr. Sherman?

A. Well, from the conditions of the clearing and from the length of time that the lands have been cleared.

Mr. Fenton: You get that as a matter of general

history, not from personal knowledge?

A. The age of trees planted, and the age of buildings, and what the people tell me.

Q. Well, Mr. Sherman, your information on that subject is just as accurate when I question you about it as when Judge Fenton questions you, isn't it?

A. Yes, sir.

Mr. Fenton: I am not questioning that. I just want to know how he obtains it, whether from personal knowledge or whether it is derived from his general historical knowledge.

Q. Well, now, what you were about to say is in explanation of the testimony you gave in answer to the questions asked you by Judge Fenton, is it?

A. Well, I am kind of talking the thing over here with you folks here, to bring out the points and the truth of the matter. That is the way I am doing.

Q. Well, proceed, Mr. Sherman.

A. The point that I was going to make was in regard to the length of time that it appeared elapsed without any development in the district, which Judge Fenton bordered on. Now, at the time of the construction and before the construction of the railroad, the settlers and people who came in there saw that there would be sale for a great deal of products during construction days; and they cleared and plowed and planted and harvested crops to feed the people that were coming in at that time, the people that were working on

the roads, and so on. Well, after the road was built, in a few years things laxed a little, and there was a period of a good many years that there was very little clearing, if any. I guess there was fifteen years that there was, practically speaking, very little development done in the district. And then it came a time when the people commenced coming into that district, and they started clearing again. That first clearing was all done on the river bottom lands, and the later clearing has all been done on the hill lands.

Q. Are they clearing now on the hill lands even in preference to the bottom lands?

A. The development these days is on the hill lands.

Mr. Fenton: The bottom lands are all cleared, aren't they?

A. Largely—largely all; not all; they are largely all cleared. There is a great deal of bottom land—quite a good deal of bottom land uncleared; but you see they are going to the hills for the fruit. Many of them are talking now that we should take out the trees from the river bottom lands, and put in hay and grasses and so on, and plant the orchards on the hills altogether. They feel that way about it; they commence to see, just as they have in all other districts, that the hill lands are more valuable for fruit than the river bottom lands.

STIPULATION.

Mr. Townsend: It is stipulated that E. J. GROVER, if called as a witness on behalf of the

Government, would testify substantially the same as the witness Charles A. Edmondson concerning substantially the same area of lands, and that his testimony would be substantially the same both upon direct and cross-examination, and redirect examination, and that his testimony shall be considered as having been offered and received, subject to the same objections that were urged to the testimony of the witness Edmondson.

I think I should qualify the foregoing offer by saying that Mr. Grover did not live in that vicinity as long as the witness Edmondson, and that there would be a difference in their testimony in that respect. Mr. Grover lived there during a period of eight or ten years, while the witness Edmondson lived there a much longer period.

Mr. Fenton: You cannot tell between what dates?

Mr. Townsend: I am willing for the record to show that he lived there between 1902 and 1911. He has been away from there about a year.

Mr. Fenton: Where does he reside now?

Mr. Townsend: He now resides in Portland.

STIPULATION.

It is stipulated that M. F. McCOWN, a witness on behalf of the Government, if called, would testify upon direct examination substantially as follows:

I have lived in Jackson County, Oregon, since July, 1900, and in Oregon all my life, having been born at

Oregon City, said State. I have been cruising timber since 1891, and have been cruising and surveying, mostly in Jackson and Josephine Counties, Oregon, since July, 1900. In 1906 and 1907, or 1907 and 1908, I spent about a year cruising lands for the Southern Pacific Ry. Co. to take the place of data lost by them during the San Francisco, California, fire. While so cruising for said company, Messrs. King and Cavell were associated with me part of the time, we three working from the same camp. In cruising the lands, we made special note of the timber, and also noted the agricultural and grazing lands, afterwards making maps and notes for the company showing these various features. Either while in the employ of said company or while at work for private parties, I have cruised over most of the lands in Jackson and Josephine Counties, and am very familiar with the railroad lands therein.

I have had about two years of experience in farming work, and have lived in small towns and agricultural communities all my life.

Of all the railroad lands in Jackson and Josephine Counties, Oregon, I estimate that about 75 out of each 100 quarter sections are suitable for settlement purposes; by that I mean that each of said 75 would support a family. I base this opinion on the fact that 75 percent of the quarter sections will average 25 to 80 acres of plow land to the quarter section, and most of the remainder of each such quarter section would be suitable for grazing purposes. This estimate of the amount of plow land to the quarter section I consider

is very conservative.

A large proportion of the lands I have classed as suitable for settlement purposes is good fruit land. It is stipulated that upon cross examination said witness would testify substantially as other like witnesses called by the Government have testified, on the general question of the suitability of these lands for settlement, the agricultural character thereof, the grazing character thereof, the timber character thereof, and the utilization for settlement purposes of these lands with which the witness was familiar, as disclosed by his direct examination.

This testimony to be received subject to the same objections made by either party to similar testimony.

STIPULATION.

It is stipulated that CHARLES M. COLLIER, a witness on behalf of the Government, if called, would testify upon direct examination substantially as follows:

I am a citizen of the United States, 54 years of age, and by profession a civil engineer, and my post office address is Eugene, Oregon. Since 1884, and during that time, have followed my profession as civil engineer, and most of my work being surveying, being County Surveyor for Lane County since 1886, and for a considerable part of said time have also held the office of City Surveyor for Eugene, and have also been Deputy U. S. Mineral Surveyor. I am familiar with and have surveyed over practically all of Lane County,

northern part of Douglas, and have surveyed more or less in Benton County. And during my work since 1886, have made Government surveys of nine or ten townships in Lane and northern Douglas Counties.

Based upon my knowledge of the topography of the country, character of the land, soil and so forth, I would say that, taking Lane County from its north and south boundaries and within the limits of the Grant limits of lands granted by Congress to the Oregon and California Railroad Company, and also as to that part of Douglas County north of the south line of township 20 South and within the limits of said grant, that approximately seventy-five per cent of the lands are suitable for settlement, that 50 per cent of said area is agricultural in character, and 50 per cent thereof grazing. A considerable portion of the area above described is timber or brush land, which covering would have to be removed before the agricultural lands can be utilized for agricultural purposes.

It is stipulated that upon cross examination said witness would testify substantially as other like witnesses called by the Government have testified, on the general question of the suitability of these lands for settlement, the agricultural character thereof, the grazing character thereof, the timber character thereof, and the utilization for settlement purposes of these lands, with which the witness was familiar, as disclosed by his direct examination.

This testimony to be received subject to the same objections made by either party to similar testimony.

STIPULATION.

Mr. Townsend: It is hereby stipulated that CHARLES V. GALLOWAY, if called and sworn as a witness on behalf of the Government in this cause, would testify in substance as follows:

I am, and for more than three years last past have been, Chairman of the Board of State Tax Commissioners, for the State of Oregon. As such officer I have become acquainted with the method of assessing real property in the several counties of the State of Oregon, including the classification of lands. I am also familiar with the methods by which the lands are classified in some counties as tillable and non-tillable lands. In eight counties of the State the assessors have made no classification of this kind. Those counties are Douglas, Klamath, Lane, Lincoln, Marion, Multnomah, Polk and Umatilla. Because of the fact that the assessment rolls for those counties do not distinguish tillable lands from non-tillable lands, all of the assessable lands in those counties are included as tillable lands in the statement of the summaries of the assessment rolls of the several counties of the State of Oregon, as equalized by the County Boards of Equalization, and compiled by the Board of State Tax Commissioners, as shown in Defendants' Exhibit 324, which covers the year 1911. In those counties where the local assessors do distinguish tillable lands from non-tillable lands, the county assessment rolls show this classification, and the lands are divided into the two classes of tillable and non-tillable lands. In those counties where this classification

is made, the practice has been to classify as tillable lands only lands that are actually under cultivation, and all other lands are classified as non-tillable lands. This practice was developed at the annual convention of the County Assessors held three years ago, and I caused inquiries to be made of all of the county assessors in the State, and thus became familiar with the foregoing facts. There may have been some slight variation as to this practice in some of the counties, but in none of them did it vary substantially from the statement made above. It has been the practice down to the present time for the county assessor of each county to file with the County Board of Equalization his original assessment roll of the county. Thereafter a duly certified copy of this assessment roll in each county, as equalized by the County Board of Equalization, is filed in the office of the Secretary of State, and the annual statements by the Board of State Tax Commissioners (for example, Defendants' Exhibits 324 and 325) are compiled from these certified copies on file in the office of the Secretary of State.

It is further stipulated that the foregoing shall have the same force and effect as if Mr. Galloway had been called and sworn as a witness and testified as herein above set forth, subject to such objections as the defendants, or either of them, may now desire to interpose.

Mr. Townsend: It is further stipulated that, in connection with the foregoing evidence of Mr. Galloway, the court shall take judicial notice of the provisions of the statutes of the State of Oregon relating to the

matter of assessments, and the county Boards of Equalization, and the Board of State Tax Commissioners, including all repeals, amendments and new enactments which were in effect at any time during the assessment of any of the lands involved in suit.

STIPULATION.

Mr. Townsend: It is further stipulated that JOHN W. KELLY, if called and sworn as a witness on behalf of the Government, would testify as follows:

That on September 2, 1907, he was a reporter for the Evening Telegram, a newspaper of general circulation published at Portland, Oregon, and that on said day E. H. Harriman, who was then President of the Oregon and California Railroad Company, visited Portland, and Mr. Kelly called upon him for an interview. The interview was had, and Mr. Kelly will swear that the statements made by Mr. Harriman to him at that time, including the interrogations by Mr. Kelly and the substance of the answers by Mr. Harriman, were in substance as follows:

"What can I do for you? Ask all the questions you like," was Harriman's salutation.

"Well, what do you think of Oregon since your trip?

"I know as much about Oregon as any man in Portland. I knew it before the trip, for I have had reports. I was not even surprised at the number of settlers, for I had reports on them. What impressed me more than anything else in Oregon is the climate.

It is the greatest climate for August I have ever found anywhere. There is nothing to beat it."

"What conditions did you find in the interior?"

"Sparsely settled regions. You go miles and miles before you see a face, or a habitation. I traveled vast stretches and saw nothing but chipmunks. The country is undeveloped. Oregon needs more people. I passed forest reserves and timber-land granted to military wagon road companies. The reserves and the military road companies control too much land. This should be remedied. The reserve policy requires changing and the military road companies should be made to dispose of holdings."

He includes the S. P.

"Then, Mr. Harriman, your contention is that Oregon cannot be properly nor speedily developed until the corporations which have vast holdings are forced to open the country, to dispose of the lands?"

"Yes."

"And does this include the lands granted to the Southern Pacific?"

Mr. Harriman permitted a smile to flit across his countenance. He wore eyeglasses, but took another pair from his pocket and polished them before making reply.

"Yes," said he, "the Southern Pacific, too, but the Southern Pacific hasn't much land. You see, before we came into the Southern Pacific, the company was

pressed for money and was disposing of lands and giving options to syndicates and speculators, and we didn't know how much land we had, so we stopped until options expired, to ascertain just what we had in land. The Southern Pacific will sell land to settlers, but not to speculators. We can tell a speculator from a settler as well as anyone. The agricultural land we will sell, but the timber-land we will retain, because we must have ties and bridge timbers, and we must retain our timber land for future supply. The Southern Pacific has an insufficient amount of timber now, and we have had to buy large tracts, looking to the future supply of ties and material. Yes, we will sell to settlers, but speculators will get none.

"One has to travel now long distances before coming to a cultivated district, and then travel another long distance before coming to another. Between these points there is nothing. The trouble with a railroad is that when it has been built you have to keep operating it, whether it is self-supporting or not. You can't pull up the track, put it in your pocket and take it to a more fruitful section."

This observation of Mr. Harriman is the only clew as to his intentions in Central Oregon. It might be construed that he does not believe the time ripe to project a line through that section, inasmuch as he found it weakly settled, but well developed where the settlers were.

"Of course," resumed the railroad magnate, "the

isolated spots under cultivation will gradually enlarge and spread, eventually reducing the unoccupied stretches between, but it takes time and is retarded by the reserves and the holdings of the military wagon road companies."

Mr. Fenton: Defendants object to this testimony offered, on the ground that the same is incompetent, immaterial and irrelevant, and particularly upon the ground that it is hearsay, and that if the statements were thus made by Mr. Harriman, he was without authority or power to make an admission or statement binding upon the defendants, or any of them, as the act or deed or admission of any of the defendants.

Whereupon complainant offered and there was received in evidence a deed dated August 7, 1886, from the Northern Pacific Railway Company to the City of Portland, for a right of way over certain lands and which the complainant contends is the deed referred to in Section 5 of the Forfeiture Act of September 29, 1890, which exhibit was received in evidence and marked "Government's Exhibit 128" and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 128."

Mr. FENTON: Mr. Townsend desires to make a statement under oath, and the defendants consent that he may make this statement in his own way, without any questions, direct or cross, being propounded to him.

B. D. TOWNSEND, being called as a witness on behalf of the government, and being first duly sworn

to testify the truth, the whole truth and nothing but the truth, testified as follows.

MR. TOWNSEND: There are three subjects which I find myself compelled to explain into the record. Of course I asked permission to testify in the case reluctantly, but find myself under obligation to do so because of the facts as I will detail them.

When I first was employed by the government in connection with the Oregon and California land grants I was Assistant United States Attorney for the District of North Dakota, and received a telegram from Attorney-General Bonaparte in May, 1908, asking me if my time and other engagements would permit me to go to Oregon to prepare a bill in equity for the government. I did not know at that time to what the subject of the telegram related, or what kind of a suit was to be instituted. I went to Oregon, arriving there in June, 1907, and found that no preparation had been made for the institution of the suit. I then set about investigating this entire general subject and collected all of the information that I could concerning these grants for the purpose of submitting it to the attorney-general. At that time I understood that I would not be employed in the suit when instituted, and at the time that my work would simply consist of an investigation of the subject with a report to the attorney-general and to Congress so that they might take such action as they desired. It thus transpired as I was seeking information I would call before me certain men whom I understood had such information, and I interview

them and put their interviews in the indirect form as statements by myself of the facts that these different persons had stated to me. In that way the statement of Mr. Elliott, which was referred to in his cross-examination, was made. However, those statements were carefully prepared in the presence of the various persons making the statements and were revised by them, not only as I dictated the statements, but also after they had been transcribed on the typewriter. It is not a fact, as stated by Mr. Elliott, that at any time during my interview with him I indicated to him that I thought that he was adverse to the railroad company and would therefore give me information. The truth is, that with Mr. Elliott, as with several other persons who had formerly been employed by the railroad company, I exercised all the caution I could to see that no colored information was conveyed to me, and I expressly stated, I remember, to Mr. Elliott that I did not want any information based upon prejudice, but was seeking a correct statement of the facts to be presented to the attorney-general. I did not take those statements at that time with the idea of using them as evidence. At that time I did not know that the attorney-general would institute the suits. If I had known that the statements would ever be used as evidence, I, of course, would have had some one else take them so that my testimony would never be necessary to verify them. It was my actual endeavor at that time to see that the information which I reported to the attorney-general and Congress was accurate, and in this connection, it is right and fair that

I acknowledge that the railroad company gave me access to all of their records and such documents as I asked for, and I spent approximately sixty days abstracting their minute books and getting records of the company. I did this work in one of the offices of the company which they kindly furnished me for that purpose.

The next subject that I desire to cover by my statement relates to correspondence which took place in the year 1872, relating to the construction by the Secretary of the Interior of the provisions of the Act of April 10, 1869, which the company contends annexed to the grant and condition restricting the manner in which the grant of lands might be sold. This correspondence has been introduced in evidence as Government's Exhibit 109, and is also covered in part by some of the exhibits that have been introduced by the defendants. This correspondence was discovered in the files of the interior department by Mr. Griffith, and others acting with him, in making a search of those files. As soon as this correspondence was called to my attention I went to the Department of Justice to secure access to all the old files of the department. I made a search of those files myself instead of entrusting it to others, for the reason that I was very anxious to find anything that might be on file in the Department of Justice relating to the subject. The chief of the files and mails division of the Department of Justice explained to me thoroughly the old filing system of the department and turned the old files over to me. They were all separated

in the basement and I was able to pursue my search without interruption. During the years 1860 to 1875 there was a correspondence register or docket kept by the Department of Justice and in this book was recorded the letters received by the department and also letters written by the department. These correspondence registers or dockets were consecutive so that I could see that they were complete. I made a careful search of those dockets and could find no letter recorded there with reference to the correspondence which appears in Government's Exhibit No. 109. In making the search of these correspondence registers, I did not confine myself to any particular name, but actually ran through the dockets completely during the period covered by this correspondence, and as stated above, found no record of any correspondence upon the subject. The letters referred to in Government's Exhibit 109, written by George H. Williams, and addressed to him, were nowhere of record in the Department of Justice. In addition to searching these correspondence registers, I actually searched all the old files themselves and to assure myself that my search was complete I actually searched all of the files covering that period. I did not limit myself to any particular file where documents on a given subject were filed. The filing system at that time was by states. The correspondence received from Oregon, for instance, being kept separately in one file, and the same as to all of the other states. I think during the latter part of that time that that system was in vogue, that where there was more than one judicial

district in a state, the correspondence was kept by judicial districts, but I did not confine myself to the files relating to the State of Oregon. I included California, because some of this correspondence originated in California. I included New York because Mr. Holladay lived there and I made every effort to locate any correspondence that might be of record in the department upon that subject, and I feel that I am justified in saying as the result of my search that correspondence never was made a part of the official files or records of the Department of Justice.

MR. FENTON: Let me at this point note an objection. Defendants object to the conclusion of the witness just stated, and as immaterial, and to the whole of the witness' testimony on this subject as immaterial.

MR. TOWNSEND: (Continuing) I wish to add upon that subject that I spent no less than two weeks making this search, and had with me at all times one or more persons assisting me, particularly Mr. A. P. Fulkerson, who, as a special employe of the Department of Justice, was assigned to assist me in the cases over which I have charge.

I also participated to a considerable extent in the search made by Mr. Griffith and Mr. Casey of the records of the General Land Office and in the office of the Secretary of the Interior, but my search there was not complete, and I relied in part upon the search made by Mr. Griffith and Mr. Casey. The search of the records in the Department of Justice was complete

on my part. Any assistance that I received from others was supervised by myself, and all of the documents were actually examined by myself as they got them from the files for me.

I wish to state in addition to the foregoing that during my search of the records in the office of the Secretary of the Interior, I found the pamphlet, a copy of which has been introduced in evidence as Government's Exhibit No. 105. This pamphlet bore the filing mark of the office, and it was filed as of some time in January, 1869, and accompanying those documents relating to the Act of April 10, 1869, as I remember it, was the committee report, although I am not positive as to that. This copy of the pamphlet, which was a printed pamphlet, I took from the files for the purpose of introducing it in evidence in this case, but in some way it has become lost and I have made a very careful search for it and am satisfied that it has been lost and that I cannot produce it. The pamphlet was the same as Government's Exhibit No. 105 with the exception of the filing mark which it bore, as I have stated above.

Mr. Fenton asked Mr. Griffith if he was sure it was Government's Exhibit No. 105 instead of Government's Exhibit No. 106. I am prepared to assure Mr. Fenton that there is no possibility of a mistake on that point because I was so familiar with those pamphlets and the documents, that I could not be mistaken. I do not think that the pamphlet issued by the west side

company, Government's Exhibit No. 106, was in the files. In fact, I am positive that it was not, because if it had been I would have taken that to be introduced in evidence, the same as Government's Exhibit No. 105. I do not recollect that there was anything else in connection with the filing of that pamphlet in the Secretarys' office that would throw any additional light upon the subject other than what I have stated.

Referring again to Government's Exhibit No. 109, it will be observed on examining this correspondence, that the letter from the commissioner of the General Land Office, dated July 16, 1872, addressed to George H. Williams, as attorney-general, acknowledges the receipt of a letter dated June 27, 1872. We have never been able to find that letter or any copy of it. This is true, not only as to the Department of Justice, but also as to the Department of the Interior.

Mr. Griffith made a special search for that letter at my request, and when he testified yesterday that this was all the correspondence, he included that in his answer and that that letter could not be found. I am satisfied that it is true that the letter has either been mislaid or lost. The jacket in which this correspondence was filed in the General Land Office noted the fact of the receipt of this letter of June 27, 1872, but the letter itself was not within the jacket, although the other correspondence which has been identified as Government's Exhibit No. 109 was in that jacket. I think that is all I have to state.

TESTIMONY OF DEFENDANTS IN REBUTTAL

Whereupon FRED H. McCLURE, recalled by defendants in rebuttal, having been duly sworn testified on direct examination as follows:

Q. Mr. McClure, I show you photographs Numbers 91 and 92, purporting to have been taken by you October 4, 1908, of the cabin of D. McLafferty, which is a part of Defendants' Exhibit 270. Mr. McLafferty has testified that he and his wife were present at the time those photographs were taken, and that they wanted to be in the picture, and that you told them that they could not be in the picture, that your instructions were from the company not to allow any of these settlers to be shown in the photographs. Now, state what the fact is, as you recollect it.

A. I do not recall any instructions of that sort. I merely did that on my own responsibility. We photographers sometimes have to scheme around and take things in our own hands to get the pictures that we want, to overcome things that seem to be in the way. I did not think the people should be in it.

Q. Did you have any instructions of any kind from the company that these settlers should not be taken by you in the pictures?

A. No, sir, not that I recall.

Whereupon, on cross examination, witness testified:

Q. You do not mean to dispute Mr. McLafferty, then, as to whether you did refuse to let them be in the picture?

A. Oh, no. I may have told them. I probably told him I did not want him in the picture, on my own responsibility.

Whereupon, on re-direct examination, witness testified:

Q. You wanted the pictures to show the cabin and the improvements as nearly as they could?

A. Yes.

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